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ABSTRACT

This guide was written to acquaint educators with their legal responsibility in providing all individuals with disabilities--whether they be students, job applicants, employees, parents, or members of the community--with the same access and opportunities that are available to others. The guide explains legal requirements under the Americans with Disabilities Act (ADA) and other laws, offers practical advice on how to meet legal mandates effectively and affordably, and provides checklists and worksheets to assess specific situations and plan needed actions. An overview explains the four federal laws that protect the rights of individuals with disabilities. Section 1 then explains what schools must and cannot do in regard to students with disabilities, how the laws affect vocational education, and how administrative requirements and compliance procedures affect schools. Section 2 focuses on what steps schools must take to make current facilities, alterations, and new facilities accessible to students, staff, and community members with disabilities. Section 3 discusses how schools must treat job applicants who have disabilities and modifications they must make for employees with disabilities. Appendices provide the complete text of the ADA, a list of resources for technical assistance and further information, and prototype checklists for determining whether facilities meet ADA standards. (JDD)

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The Educator's Guide to The Americans with Disabilities Act

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The Educator's Guide to the Americans with Disabilities Act

by Patricia A. Morrissey

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Foreword

The American Vocational Association prides itself on its commitment to helping educators offer the greatest possible access to education to all students. This new publication is a testimony to that commitment.

When the Americans with Disabilities Act became law in 1990, it assured all individuals with disabilities that they would receive the same opportunities provided to other citizens. Vocational-technical educators have been longstanding supporters of the rights of Americans with disabilities to receive the same educational opportunities offered to others. It is therefore with great pride that we offer this guide as a service to all educators.

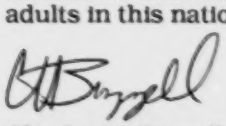
The AVA Board of Directors, while fully supporting the new law, realized that it brought with it a whole host of new responsibilities for educators. The law's complexity made a guide like this one an absolute necessity to help administrators and other educational personnel work through the law's multi-faceted requirements. The existence of other legislation directed at the provision of services to individuals with disabilities added to the challenges facing educators.

AVA is pleased that we were able to secure one of the nation's most highly qualified experts on the ADA to write this guide. Dr. Patricia Morrissey is a nationally recognized authority on issues related to people with disabilities. She was one of the primary authors of the ADA while a staff member of the Education and Labor Committee of the U.S.House of Representatives. She currently serves as Vice President for Governmental and Regulatory Affairs for Employment Advisory Services, Inc. in Washington, D.C., an organization that advises a wide range of corporations and other organizations on employment issues. She also is the author of two other books on the ADA.

This guide is far more than an explanation of the legal requirements regarding services to students with disabilities. It offers an abundance of practical advice on how to meet legal mandates effectively and affordably. The guide's extensive checklists and worksheets make it easy for educators to assess their own situations and to plan the needed actions to bring their programs into compliance with the ADA. Purchasers of this guide are free to copy checklists as needed for use in conducting necessary evaluations of their activities.

The author has asked that we provide these special notes about the text: Section 3—The conceptual framework for the section is derived from a guide on employment that the author wrote under a grant (#H133D10123) from the U.S. Department of Education. Chapter 13—The basis for the information in this chapter is *Disability Etiquette in the Workplace*, a book the author wrote for the Employment Policy Foundation in Washington, D.C.

AVA is pleased to be able to provide this valuable information to the education community. Educators must lead the way in their sensitivity and responsiveness to the needs of individuals with disabilities. We believe that this guide can play a very important role in that process. The rest is up to those individuals who plan, administer and deliver education to youth and adults in this nation.



Charles H. Buzzell
Executive Director
American Vocational Association

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Introduction

The principal impetus for this guide is the enactment of a new law, the Americans with Disabilities Act (ADA), much of which took effect in January 1992. The ADA, the farthest-reaching civil rights law passed by Congress since the 1960s, prohibits discrimination against people with disabilities in employment, public services, public accommodations, public transportation and telecommunications.

Both public and private-sector organizations must comply, whether or not they receive federal funds. While the ADA affects a wide range of organizations and institutions, this book focuses on its impact on education.

The ADA reinforces or expands rights guaranteed to disabled people through several other federal laws. It presents new challenges and opportunities to educators as they seek to comply and to determine the ADA's impact on other laws protecting the rights of individuals with disabilities.

The ADA does not require educators to revamp their entire educational program or all their employment procedures. Instead, it requires that educators provide disabled individuals—whether they be students, job applicants, employees, parents or members of the community—with the same access and opportunities that are available to others.

Of course, many disabled people can freely participate in all school programs and activities without any special consideration or modifications by educators. Others require only that educators allow them to do something in a different manner or at a different time. Still others need individual assistance, special modifications, auxiliary aids and services or environmental changes.

Educators already have a history of accommodating students with known and suspected disabilities. However, the ADA has a host of new requirements that affect every aspect of providing services to these students. It may bring a new level of accountability to the entire educational and training community.

As with many other federal laws, the ADA spells out what's required but allows considerable flexibility in *how* the requirements are met. That's both a blessing and a challenge. It's a blessing because it lets educators respond creatively to the needs of individual disabled students. But it's a challenge in some instances, because educators can't be certain their actions fulfill the law's requirements.

Adding to the uncertainty, the ADA is so new that it's still unclear exactly what the law requires in some areas. Definitive answers will only come with legal challenges

and court rulings. In the meantime, this guide seeks to provide the best advice currently available on how to comply with the law and avoid problems.

A note on style may be helpful. Throughout this guide, the terms "schools" and "educational institutions" are used interchangeably as shorthand for the whole gamut of agencies, institutions and organizations involved in education and training. All of them—public and private K-12 schools, community colleges, universities, vocational schools, local education agencies and state education agencies, among others—are covered by the ADA. When ADA requirements vary for different types of institutions, differences are clearly noted in the text.

Here's a summary of the information you'll find in the guide:

Overview

Briefly explains the four laws protecting individuals with disabilities and who qualifies as "disabled" under each of the laws.

Section 1: Services to Students with Disabilities

Explains what schools must and cannot do in regard to disabled students, how the laws affect vocational education and how administrative requirements and compliance procedures affect schools.

Section 2: Making Facilities Physically Accessible

Details what steps schools must take to make current facilities, alterations and new facilities accessible to students, staff and community members with disabilities.

Section 3: Employing Individuals with Disabilities

Explains how schools must treat job applicants who have disabilities and what modifications they must make for disabled employees.

Appendix A

Provides complete text of the Americans with Disabilities Act.

Appendix B

Provides resources for technical assistance and more information on the ADA and ADA Regulations.

Appendix C

Offers prototype checklists for determining whether facilities meet ADA standards.

Overview

Four federal laws affect interactions between schools and disabled students, job applicants, staff members, parents and members of the community. This overview will briefly describe each law, explain who each law protects and discuss how the definition of "disabled" sometimes conflicts among the various laws.

The four laws that protect the rights of disabled people include:

- The Americans with Disabilities Act of 1990 (ADA)
- Section 504 of the Rehabilitation Act of 1973 (section 504)
- Part B of the Individuals with Disabilities Education Act of 1975 (Part B of IDEA), previously known as the Education of the Handicapped Act
- The Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (the Perkins Act)

The ADA

The Americans with Disabilities Act of 1990, much of which took effect January 26, 1992, is both the most recent and the most comprehensive law barring discrimination against disabled individuals. It reinforces or expands rights guaranteed to disabled people by the other three laws.

The ADA is based on five key principles that have been viewed historically as "civil rights" for disabled individuals. These include:

1. A focus on the individual.
2. Integration.
3. Equal opportunity.
4. Physical accessibility.
5. The provision of reasonable accommodation and auxiliary aids and services.

Because the ADA is a civil rights law, it preempts any other local, state or federal law that grants lesser rights to individuals with disabilities. The ADA does not provide funding to carry out its mandates. Nevertheless, a wide range of public and private institutions — including educational institutions — must comply with its provisions.

The ADA does not directly address schools. Therefore, educators must apply ADA principles to school and training settings without direct guidance. Educators who already understand and comply with requirements in Section 504, Part B of IDEA, or special population requirements in the Perkins Act are

well on the way to complying with the ADA as well. However, the ADA goes beyond the other three laws.

Despite the lack of direct references to schools, the ADA affects every aspect of the educational process. Its mandates cover three broad areas:

Services. The ADA affects integration, program accessibility, safety, communication, the provision of assistive aids and services and preparation of self-evaluations.

Physical accessibility. The ADA affects accessibility audits, removal of barriers both inside and outside a facility, alterations or new construction and preparation of transition plans.

Employment. The ADA affects the posting of job notices, setting of job qualifications, interviewing, testing of applicants, hiring, the provision of reasonable accommodations and training, among other areas.

Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap by any organization that receives federal grant funds. Grant recipients must provide access and opportunities to qualified disabled people who wish to participate in their services, activities or programs.

Like the ADA, section 504 is a broad civil rights statute. In fact, many of the ADA's provisions were modeled on section 504 regulations and the two laws have many similar or identical provisions. However, section 504's importance has diminished with passage of the new law. It appears likely that disabled individuals will increasingly use the ADA in pursuing their civil rights.

Nonetheless, Section 504 still affects a wide range of educational practices, including the provision of services to students, physical accessibility, preparation of self-evaluations and transition plans, employment and compliance procedures, among other areas.

Part B of IDEA

Part B of the Individuals with Disabilities Education Act of 1975 (Part B of IDEA), previously known as the Education of the Handicapped Act, requires that every disabled child between ages 3 and 21 be provided with a free public education. The law spells out the rights of children who require special education.

Part B of IDEA is very prescriptive and lays out in detail how a free public education is to be provided. It specifies evaluation requirements, individualized education program (IEP) requirements, placement requirements and procedural safeguards. Other issues it influences include integration, identification of disabled children, communication with parents of disabled students, the provision of assistive devices and services, rehabilitation counseling and transition services.

Part B of IDEA is devoted only to an educational issue: the provision of a free public education to disabled students. By contrast, the ADA and section 504 protect individuals from discrimination in both education and employment-related matters.

The Perkins Act

Under the Carl D. Perkins Vocational and Applied Technology Education Act of 1990, disabled students are included under the collective term of "special populations." Other members of this category include students who are educationally and economically disadvantaged, live in foster care or correctional institutions, have limited English skills or participate in programs to eliminate sex bias.

Much of the text of the Perkins Act addresses how recipients must spend Perkins dollars. For example, recipients of Perkins basic state grant funds must:

- use the money to improve vocational education programs;
- provide for "full participation" by members of special populations, including disabled students;
- operate at a limited number of sites and give funding priority to sites with the highest concentrations of special populations.

Besides requiring a focus on serving the needs of special populations, including disabled students, the Perkins Act also affects communication with disabled students, services provided to disabled students and state plan provisions regarding disabled students.

Later chapters will examine specific provisions of these four laws and how they interact in protecting disabled students.

Definitions

The definition of "disability" is a critical issue as schools try to determine the extent of their disabled population and what kinds of services they must provide. Definitions vary among the four laws that protect the rights of disabled people. Thus, the group of people protected from discrimination by each of the laws varies to some extent.

The ADA and Section 504

The definition of "an individual with a disability" is the same under both the ADA and section 504. Both laws state that "an individual with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities, one who has a record of such a disability, or is regarded as having such a disability."

This is a broad definition that requires some explanation. For example, what constitutes a "major life activity?" Such activities as walking, talking, seeing, hearing, caring for oneself, breathing, learning and working all qualify.

It's also important to note that under the definition, three distinct types of people are considered disabled:

1. Those who have a physical or mental impairment that substantially limits a major life activity. An example would be a student who uses a wheelchair because he cannot walk.

2. Those who have a record of a physical or mental impairment that substantially limits a major life activity. Examples include children who have a history of cancer or who suffered severe burns but recovered enough to return to school. This group also includes students who previously used illegal drugs, but have quit and either attended or are attending drug rehabilitation programs.

3. Those who others consider disabled, but who in fact do not have a disability. Examples include children with facial disfigurements or tics.

The ADA—but not section 504—protects two additional types of people from discrimination based on disability. These include:

1. People who are not disabled themselves, but who associate or live with someone with a disability. For example, a student who volunteered at an AIDS hospice could not be discriminated against based on her volunteer work.

2. People who may not have a disability, but who are involved in an ADA complaint. An example is a teachers' union representative who helps a disabled employee file an ADA complaint.

Implications of Disability Definitions

- **The concept of disability centers on functional issues** rather than on strictly medical issues.
- **A physical or mental impairment must *substantially* limit a major life activity.** Thus, a student who has a temporary disability such as a broken leg in a cast would not be protected by the ADA or section 504.
- **The laws protect people with either visible or invisible disabilities.** Invisible disabilities include seizure disorders or other conditions that aren't obvious or are only occasionally apparent.

Who is Excluded. Certain conditions are excluded from these definitions of disability. Both the ADA and section 504 specifically agree that persons who currently use illegal drugs are not disabled. The ADA—but not section 504—also specifically excludes the following conditions from its definition of disability:

- homosexuality and bisexuality;
- transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorder not resulting from physical impairments and other sexual behavior disorders;
- compulsive gambling, kleptomania and pyromania;

- psychoactive substance use disorders resulting from the current use of illegal drugs.

Qualification Requirements. Under both the ADA and section 504, disabled people are not protected unless they also are "qualified" to participate in an activity. Depending on the case, people may be "qualified" simply by their status as a student or parent. In other cases, a person must have certain degrees and licenses, years of experience or training to be qualified.

Under the ADA, schools must help disabled people qualify to participate. Just how extensive this help must be will be explained in later chapters. For now, educators should realize the ADA's mandate has several implications:

- Before turning away a disabled student as unqualified, educators must consider whether adjustments can be made in policies, practices or procedures so the student can participate.
- Educators must ensure that qualifications are relevant.
- Qualifications must be applied consistently to all individuals.

Part B of IDEA

Part B of IDEA defines disabled children as those with any of 11 conditions that require them to receive special education and related services. The 11 conditions include:

1. Mental retardation.
2. Hearing impairments, including deafness.
3. Speech impairments.
4. Language impairments.
5. Visual impairments, including blindness.
6. Serious emotional disturbance.
7. Orthopedic impairments.
8. Autism.
9. Traumatic brain injury.
10. Specific learning disabilities.
11. Other health impairments.

The last category, "other health impairments," is so broad that it requires a definition of its own: " 'Other health-impaired' means having limited strength, vitality or alertness due to chronic or acute health

Who Qualifies?

ADA and Section 504 "Qualification" Examples:

Example 1: To participate in a training program, a student must have at least a "C" average. Past experience has shown that students with lower grades are not successful in the program. In this example, a disabled student with a "C" average or above is "qualified" and cannot be excluded from the program. The "C" average qualification is valid for two reasons: it's linked to a student's likely chance of success and it can be applied equally to all applicants, including students with disabilities.

Example 2: An elementary school seeking to hire a teacher requires a primary license and two years of teaching experience at the elementary level. If an applicant meets these requirements, she is "qualified" and cannot be rejected because she uses a wheelchair, has a history of cancer or has some other disability. However, if the disabled applicant does not have the required license and experience, she is not "qualified" and does not fall under the protection of the ADA or section 504.

Example 3: A school plans an orientation program for parents of new students in the neighborhood. One of the parents is deaf. He is "qualified" simply by his status as a parent, and the school must take steps to accommodate him.

problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia or diabetes, that adversely affects a child's educational performance." The final clause is critical. If a child's condition does not hurt his or her educational performance, the child does not qualify as disabled under the "other health impairments" section of Part B of IDEA.

"Other health impairments" is an umbrella category that facilitates eligibility for children who do not fall under any of the other categories. Even with this broad category, though, IDEA's definition of disability is far narrower than the definition under the ADA and section 504. This means that if a child does not qualify for services under IDEA's definition, he or she may still be able to seek services under the broader definitions of section 504 and the ADA.

Preschoolers with disabilities. In 1991 the definition of disabled under Part B of IDEA was expanded regarding preschool children. The new definition gives states the option of identifying preschoolers ages 3 to 5 as "developmentally delayed" and providing them services under Part B of IDEA. The law defines "developmentally delayed" as children who are "experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services."

Identifying preschoolers as "developmentally delayed" is generally more appropriate than trying to fit them into one of the discrete disability categories because of the inherent difficulties in assessing young children. This expanded definition of disability under Part B of IDEA gives states the option of being inclusive rather than exclusive in their efforts to identify and help preschoolers with disabilities. The definition's expansiveness is certainly consistent with the ADA.

The Perkins Act

The Perkins Act uses several phrases when referring to students with disabilities: "students with handicaps," "students with disabilities that have individualized education programs," and "students with disabilities that do not have individualized education programs but who are protected by section 504 of the Rehabilitation Act of 1973."

Most importantly, though, Perkins specifies that the term "individual with handicaps" has the same meaning as the definition of a disabled person under the ADA. Thus, while Perkins uses several confusing phrases in discussing disabled people, it ultimately embraces the inclusive definition of disabled in the ADA.

Conclusion

This discussion of definitions is far more than just an exercise in semantics. The definition of a person's status is important. It may determine his civil rights and his eligibility to participate in a program. Educators must familiarize themselves with the definitions and the areas in which they differ.

To help educators respond to individuals with disabilities both appropriately and effectively, later chapters will include strategies for minimizing problems caused by differing definitions of disability.

A Comparison of the Four Laws Protecting People With Disabilities

The following chart compares the major provisions of the four laws that protect the rights of disabled people. Key concepts covered in the four laws are listed in alphabetical order. The chart, by necessity, contains very condensed explanations of each provision. Use the chart simply for comparison purposes and refer to the text where noted for a full explanation of each provision.

CONCEPT	ADA	SECTION 504	PART B OF IDEA	THE PERKINS ACT
Scope of Protection	The ADA prohibits discrimination on the basis of disability in public services, transportation and accommodations.	Section 504 prohibits discrimination on the basis of disability by public and private institutions that receive federal grants.	Part B prohibits discrimination on the basis of disability in the provision of a free, appropriate public education.	The Perkins Act prohibits discrimination on the basis of disability in vocational education and related programs.
Accountability	For both public and private institutions, the ADA is a complaint-driven system. Unless an individual files a complaint or sues in court, generally no investigation occurs. *(See Chapter 6)* Public institutions, but not private ones, must designate an ADA compliance officer and publish his name, address and telephone number. *(See Chapter 6)*	Section 504 is the same as the ADA. *(See Chapter 6)*	States are subject to periodic monitoring and audits conducted by the U.S. Department of Education.	States are subject to periodic monitoring and audits conducted by the U.S. Department of Education.
Administrative Requirements	Public institutions with 50 or more employees must complete self-evaluations assessing the extent to which they discriminate in policies, procedures and practices and describing corrections to be undertaken. They also must develop plans describing how and when they will remove physical barriers to access. *(See Chapter 5)*	Public and private institutions with 15 or more employees that receive federal funds must complete self-evaluations and transition plans. *(See Chapter 5)*	State educational agencies must complete 3-year state plans outlining how they did and are going to comply with Part B. *(See Chapter 4)*	State educational agencies must complete 3-year state plans outlining how they did and are going to comply with Title II of the Perkins Act. *(See Chapter 4)*

CONCEPT	ADA	SECTION 504	PART B OF IDEA	THE PERKINS ACT
Compliance: Affected Entities and Deadlines	All public and private institutions must be providing services and opportunities now. Public and private institutions with 25 or more full- or part-time employees must be providing employment opportunities now. Public and private institutions with 15 to 24 full- or part-time employees must provide employment opportunities by July 26, 1994. Public and private institutions with fewer than 15 full or part-time employees do not have to offer employment opportunities to disabled individuals.	Public and private institutions that receive federal grants must comply.	State and local educational agencies, and private schools under contract with such agencies, must comply.	Recipients of Perkins funds must comply.
Complaint Process	Individuals who are discriminated against in services have two options: file a complaint with the relevant federal agency or sue in federal court. *(See Chapter 6)* In employment discrimination cases involving private institutions, a person must exhaust administrative remedies before going to court. For employment cases involving public institutions, this person's obligation to exhaust administrative proceedings first is not clear. *(See Chapter 17)* Enforcement agencies encourage informal mediation and voluntary compliance.	Individuals discriminated against in services *or* employment have two options: they may file a complaint with the relevant federal agency or sue in federal court. *(See Chapters 6, 17)* Enforcement agencies encourage informal mediation and voluntary compliance.	Individuals with Part B complaints must exhaust the due process procedures in Part B before going to court. In most states this involves a hearing in front of a hearing officer and, if requested by either the individual or the educational agency, a state level review. *(See Chapter 6)* Mediation is not required, but is endorsed.	Which procedure an individual uses is affected by the law under which he pursues a complaint—ADA, Section 504 or Part B of IDEA.

CONCEPT	ADA	SECTION 504	PART B OF IDEA	THE PERKINS ACT
Defenses	**A range of defenses are available. Whether a defense can be used depends on the nature of the situation and whether a public or private institution is involved.** *(See Chapter 1)* **Services or employment:** Actions that compromise safety or involve significant difficulty or expense may not be required. **Barrier removal:** Private institutions are expected to undertake actions that are easy and cheap. Public institutions that cannot undertake actions to overcome discrimination because such actions would represent an undue financial or administrative burden must put the decision in writing and have an official sign it.	Section 504 defenses are generally the same as those in the ADA, but do not include the same level of detail nor do they distinguish defenses in terms of whether an institution is public or private. *(See Chapter 1)*	**Part B offers no specific defenses. Whatever is included in a student's Individualized Education Program must be provided.** *(See Chapter 5)*	Educational agencies are not required to spend non-federal dollars on supplementary and other services needed by disabled students. However, the ADA may make this provision moot. *(See Chapter 4)*
Definition of Disability	**An individual with a disability is one who has a physical or mental impairment, has a record of such an impairment or is regarded by others as having such an impairment. The impairment must substantially limit a major life activity.** *(See Overview)*	The Section 504 definition is nearly identical to the ADA's. *(See Overview)*	**A child between 3 and 21 who is mentally retarded or autistic or has a specific learning disability, a serious emotional disturbance, a traumatic brain injury, vision, speech, language, hearing, orthopedic or other health impairment, and as a result needs special education and related services.** *(See Overview)*	The Perkins Act references all of the other definitions in a variety of contexts. *(See Overview)*

CONCEPT	ADA	SECTION 504	PART B OF IDEA	THE PERKINS ACT
Discrimination	Discrimination occurs when an institution fails or refuses to provide an opportunity, service, benefit or privilege to a qualified disabled individual.	Section 504 is the same as the ADA.	Discrimination is the failure to provide procedural safeguards and a free appropriate public education.	Discrimination is addressed through references to the other laws.
Eligibility	To be eligible, a person must meet the ADA's definition of disability and be qualified for the program, service or job. *(See Overview)*	Section 504 is the same as the ADA. *(See Overview)*	A student who has one of the disabilities covered in the law's definition of disability must need special education and related services. *(See Chapter 3)*	Eligibility is determined by the individual's ability to meet the ADA, Section 504 or Part B definition of disability and his/her ability to meet eligibility requirements for the particular program. *(See Chapter 4)*
Federal Enforcement Agency	The Department of Education, assisted when needed by the Department of Justice, enforces complaints on issues other than employment filed against public institutions. *(See Chapter 6)* The Department of Justice enforces complaints related to non-employment issues involving private institutions. *(See Chapter 6)* The Equal Employment Opportunity Commission enforces employment requirements. *(See Chapter 17)*	The Department of Education enforces Section 504. *(See Chapter 6)*	The Department of Education enforces general compliance. State-level educational agencies also are responsible for overseeing compliance and investigating complaints.	The Department of Education enforces general compliance. State-level educational agencies also are responsible for overseeing compliance and investigating complaints.
Funding	No funding through the ADA. There are limited federal tax credits and deductions for compliance efforts by small, private institutions. *(See Chapter 12)*	No funding through Section 504. There are limited federal tax credits and deductions for compliance efforts by small, private institutions. *(See Chapter 12)*	Funds are available through a formula grant program.	Funds are available through a formula grant program.

CONCEPT	ADA	SECTION 504	PART B OF IDEA	THE PERKINS ACT
Noncompliance Consequences	**Related to services:** A person who wins a lawsuit can receive injunctive relief and attorney's fees. *(See Chapter 6)* The attorney general has the power to file suits as well. In such suits the court has the power to fine private entities that discriminate up to $50,000 for a first offense and up to $100,000 for each subsequent offense. *(See Chapter 6)* **Related to employment:** Individuals may file suit and request jury trials. A successful complainant can receive back pay, attorney's fees, expert witness fees, benefits and reinstatement. Private institutions may also be liable for compensatory damages of up to $300,000 per offense. *(See Chapter 19)*	Section 504 is the same as the ADA, except there are no civil fines, access to jury trials or compensatory damages. Noncompliance could result in loss of federal funds as well. *(See Chapter 6)*	**Noncompliance, following a federal monitoring visit, can result in loss of Part B funds.** *(See Chapter 6)* A disabled person successful with a complaint, either at the administrative level or in court, can receive injunctive relief.	Noncompliance, following a federal monitoring visit, could result in loss of Perkins funds. *(See Chapter 6)*

Section 1

Services to Students with Disabilities

Introduction

Section 1 examines what opportunities and services schools must provide to disabled students, parents and members of the community. It details what schools must and cannot do in regard to disabled students, how the laws affect vocational education and how administrative requirements and compliance procedures affect schools.

Here's an overview of the information you'll find in each chapter:

Chapter 1: Actions Schools Must Take

Provides detailed explanations of what schools must do under the four laws that protect the rights of disabled people. Plus checklists for applying ADA requirements.

Chapter 2: Actions Barred by the ADA

Describes what schools cannot do in regard to disabled students.

Chapter 3: Identifying Children with Disabilities

Explains the "Child Find" system required by Part B of IDEA and conflicts that arise between it and the ADA.

Chapter 4: Perkins Title II Requirements

Details how the four laws protecting disabled students specifically affect vocational education.

Chapter 5: Administrative Requirements

Specifies administrative requirements under the ADA and section 504, with most of the focus on public institutions. Plus a checklist for assessing compliance.

Chapter 6: Complaints and Enforcement

Explains complaint and enforcement procedures in all situations other than employment.

Chapter 1

Actions Schools Must Take

The ADA and the other three laws guaranteeing the rights of disabled students require numerous actions by educators to meet students' needs.

This chapter will explain what educators must do. Most of the requirements are imposed by the ADA, although some are imposed by the other three laws. This chapter will explain under which law each requirement arises and provide guidance where the laws conflict. It also will explain, where appropriate, any differences in requirements for public and private institutions. And finally, it will discuss limits on what educators must do. The next chapter will explain what educators *cannot* do in regard to disabled students.

The Purpose of the Laws

- To integrate disabled students into schools to the fullest extent possible.
- To provide them with the same educational opportunities that other students enjoy.

The ADA has four basic standards that should govern educators' efforts to serve disabled students. These include:

1. The program, service or activity, when viewed in its entirety, must be readily accessible to and usable by disabled people.
2. A disabled person must be able to access and act on information about a program, service or activity.
3. When evaluating disabled students, screening and testing procedures must be fair, accurate and nondiscriminatory.
4. Disabled students must be able to participate in an activity, service or program offered to other students.

The ADA does not provide educators with a simple, limited set of requirements to facilitate compliance. The broad, generic nature of the above standards highlights the need for educators to use a case-by-case approach in responding to the needs of disabled students. However, while responding to the needs of individuals, educators also must consider systemic changes that will make it possible to respond efficiently and ef-

fectively to needs that may arise in the future.

Integration/Accessibility

The ADA requires that educators make every effort to ensure that programs are offered in integrated settings. Integration is only possible, though, if both the program and physical facilities are accessible to disabled students.

Integration is expected even where educators must make modifications so that disabled students can participate. If the modifications don't work in an integrated setting, schools may offer separate opportunities. However, separate opportunities are to be a last resort. Even when separate opportunities are offered, a disabled student may decline them in favor of participating in an integrated setting. The bottom line is that disabled students should be seen everywhere doing everything that students without disabilities can do.

Program Accessibility

Integrating disabled students into regular settings can require modifications in program policies, practices or procedures. The ADA requires educators to make "reasonable" modifications so long as doing so does not "fundamentally alter" the program or result in undue financial or administrative burdens.

So what is "reasonable"? Here are some examples:

- Notifying potential students that a range of services are available to disabled students, including help in filling out forms and obtaining modified textbooks, and telling them where to call for information.
- Offering returning disabled students a chance to register for classes early so any special adjustments they need can be arranged before school starts.
- Letting a disabled student take an exam at a different time or place than other students.
- If a disabled student transfers to the school during the year, reassigning a class to a different room if the student can't reach the original room.
- Letting students with certain disabilities leave the final-period class early so they can safely board buses before the rush of other students.
- Training faculty members about the types of modifications they can make to accommodate disabled students.

What types of modifications may not be required because they would "fundamentally alter" the program? Again, some examples:

- Waiving an entrance requirement to a class or activity when the requirement bears directly on the student's chance of success.
- Putting a disabled student in a class where he would require so much individualized attention from the teacher that it would substantially reduce the amount of instruction provided to other students.
- Putting a disabled student in a class where the auxiliary aids he needs or behavior he exhibits substantially affect other students' ability to learn.

Educators have the right to expect that students with disabilities take exams, complete class assignments and benefit from instruction along with their classmates. At the same time, though, they should recognize that under the ADA it will be a rare case where they can justify excluding a disabled student from a class or activity. In most cases, some sort of reasonable modification can be made so the disabled student can participate.

(See "Analyzing Educational Environments" checklist on page 26).

Physical Accessibility

Section 2 of this guide discusses physical accessibility in detail. For now, a few key points may be helpful:

- Although it's not specified in the ADA, the accessibility requirement suggests an "at least one" standard. For example, disabled students should be able to access at least one biology lab, but don't have to be able to access all of them. Similarly, they should have access to at least one location for each special service, but don't have to be able to access every location in a school.

- Carrying a student up or down stairs is not considered a method of achieving physical accessibility. Carrying is permitted only in "manifestly exceptional circumstances," and is not an acceptable alternative to installing a ramp or chairlift. In cases where carrying is the only option, the people carrying the disabled student must have received formal training on the safest and least humiliating method.

- What constitutes a "reasonable modification" for a public school may be considered unreasonable for a private school. The ADA suggests that with respect to physical access, three fundamental differences exist between obligations of public and private schools:

  1. Public schools usually have the option of moving a classroom from one floor to another or of offering a service at multiple or alternative locations. Private schools, on the other hand, often have to work within the constraints of a single site.

  2. For a public school system, a shift in location, removal of a barrier or provision of special assistance does not necessarily represent an additional cost. For a private system, though, such actions often cost additional money.

  3. Ensuring physical access often requires removing barriers or offering alternatives to barrier removal. The degree of such modifications required of private schools must be reasonable, defined as being both easy and inexpensive. Public schools, on the other hand, must make such modifications unless doing so would create an undue financial or administrative burden.

Denying Access

One other important difference in the ADA's accessibility requirements for public and private schools affects cases where an official decides to deny access because making a modification would fundamentally alter a program or be an undue administrative or financial burden. A public school official who makes this decision must put it in writing and sign it. There is no such requirement for a private school official.

Achieving Accessibility

The ADA identifies these methods for achieving accessibility. This list is not all-inclusive. Schools are free to use any other methods that result in making a program accessible.

- Redesigning equipment
- Assigning aides
- Reassigning services to accessible locations
- Making home visits
- Altering existing facilities
- Building new facilities
- Using accessible rolling stock such as mobile units

Integration and IDEA

In practice, Part B of IDEA rather narrowly defines the principle of integration. It usually centers on what type of classroom a disabled student attends: regular classroom, special education classroom or resource room. Under Part B of IDEA, the Individualized Education Program (IEP) team is charged with choosing the appropriate placement for a disabled student. IDEA requires that the team choose the "least restrictive environment" for the disabled student so that to the maximum extent (full inclusion if possible), she can participate in classes with students who are not disabled.

The ADA's emphasis on integration suggests that educators should construe placement and "least restrictive environment" in broad terms under Part B of IDEA. Instead of just focusing on what type of classroom a disabled student attends, they also should examine the student's access to specialized education such as biology and computer labs, vocational education, physical education, electives, field trips, school clubs, achievement awards and intramural and varsity sports.

Frequently, a disabled student's IEP focuses solely on his required education, omitting

other activities such as sports and clubs. Whether a student has access to these activities is usually determined on an ad hoc basis, often depending on how hard the student pushes to participate and whether the principal, coach or sponsor is willing to make needed adjustments. The ADA makes it clear that disabled students must have the opportunity to participate in all school-based or school-sponsored activities.

Safety

Public and private schools can impose requirements aimed at protecting students' safety. However, such requirements cannot be based on fears, stereotypes or assumptions about disabilities.

Following are examples of proper and improper safety requirements involving disabled students:

- A student with cerebral palsy should be allowed to participate on a swim team if she can perform the required swimming strokes and qualifies in time trials. How the student gets to the side of the pool or into and out of the water may involve assistance from others, but this cannot be the basis for excluding the student.
- A student with a disability associated with high levels of fatigue may not be able to safely take an eight-hour bus ride on a field trip. But students who are retarded, blind, deaf, learning disabled, emotionally disturbed or who use wheelchairs usually do not pose safety risks either with or without supervision and assistance.
- Most disabled children in primary grades cannot be denied access to the playground because of safety concerns. Usually, these children can join their same-age peers without problems.
- Decisions about a disabled student's ability to participate in a vocational education program should be based on the student's qualifications. His inability to hear, to use two hands at a certain height, or to balance are immaterial. These limitations can be overcome by adding a flashing light to equipment, raising a platform or giving permission to operate equipment while sitting down, respectively. However, there are cases where it's impossible for a school to surmount a student's limitations. For example, it may be impossible to create a safe vocational setting for a student who is blind or who has limited strength. In these cases, the school can exclude the disabled student because of safety concerns.

Communication

Educators communicate with a wide range of people: students, staff members, job applicants, parents, and members of the surrounding community. The ADA requires that any communication with disabled people be as effective as communication with others.

This communication requirement can encompass a wide range of actions. It extends from simple actions like writing a brief message on a note pad for a deaf student to more complex actions like providing course materials in braille for blind students.

There are two limits on what schools must do:

1. They aren't required to do anything that would fundamentally alter the program offered or result in an undue financial or administrative burden.
2. They aren't required to make the latest, most expensive technology available to disabled students.

The communication requirements differ slightly for public and private schools. For

Providing Information

Here are three tips for making information available:

1. On any written communication, include a notice that alternative formats are available and provide a number to call for more information—and make sure the person who will answer your phone is prepared to respond appropriately.
2. Whenever possible, keep copies of documents on computer disks so they can be more easily converted to large type or braille.
3. If time and resources permit, place important documents on audio tapes.

all practical purposes, public schools must find an effective way to communicate with a disabled person. Private schools have a bit of leeway, as will be explained.

The ADA's mandate does not mean that educators must anticipate all possible alternative ways of producing and disseminating information. But it does mean that if they know a disabled person needs information created in an alternative format or delivered by alternative means, they should be prepared to respond in a timely manner.

When Alternative Means of Communication Are Needed

The need for alternative means of communication arises most commonly in dealing with five kinds of impairments:

Sight. Such people commonly require communications in braille or audio form.

Hearing. The hearing impaired usually need to communicate in writing or signing, which may require an interpreter.

Speech. Speech-impaired people may need to communicate in writing or by typing on a computer keyboard.

Mobility. Information may have to be taken or faxed to people with such disabilities.

Cognitive. Information may need to be explained.

(See "Effective Information Sharing" and "Information for Disabled Parents" checklists on page 27).

In general, educators can ensure compliance with the ADA's communication requirement if they:

1. Either have on hand or are prepared to offer one alternative to information that is disseminated visually or aurally;
2. Have someone available who knows how to handle a request for information in alternative forms and can respond promptly; and
3. Have someone available who can explain information to disabled people with cognitive impairments that limit their ability to understand.

The ADA imposes four additional requirements on public schools and one on private schools. Public schools must:

1. **Give primary consideration to the disabled person's preference in choosing which type of auxiliary aid or service to provide.** For example, a teacher may normally communicate with deaf students through a personal computer, but a particular student may prefer to lip read or use an interpreter. Educators can offer alternative methods of communication, but should comply with the disabled person's request whenever possible. Any method offered must meet one test: Is it as effective as that offered to others who are not disabled? As noted earlier, schools also aren't expected to take actions that will result in fundamentally altering the program offered or that will result in undue financial or administrative burdens.
2. **Install telecommunications devices for the deaf (TDDs) or fax machines so that the school can communicate by telephone with people who have hearing or speech impairments.** Such devices should be available in every office where it's necessary to have immediate telephone access to students or the public.
3. **Ensure that disabled people, including those with vision and hearing impairments, be able to get information about the availability of accessible services and facilities.** This suggests, among other things, that administrative secretaries, recruiters and other "frontline" personnel have such information available.
4. **Post the international symbol for accessibility (the wheelchair symbol) at every building entrance that's accessible to the disabled.** At building entrances that aren't accessible, schools must post signs directing disabled people to an accessible entrance or to a loca-

tion where they can obtain information about accessible facilities.

The extra requirement for private schools requires that they:

- **Ensure that no disabled person is excluded, denied services, segregated or otherwise treated differently than others because of the absence of auxiliary aids or services.** This requirement is wide ranging. For example, it extends to people who make general inquiries about a program and are not yet applicants or students.

Postsecondary Schools

All the ADA's requirements for communicating with disabled students apply to postsecondary schools as well as K-12 programs.

However, postsecondary schools also must ensure they follow the ADA's mandates in their marketing and recruiting efforts. The ADA doesn't require postsecondary schools to specifically recruit disabled students. Nonetheless, the ADA does expect that disabled individuals will have the same opportunity as others to access information about programs and talk to recruiters.

In planning marketing and recruiting efforts, postsecondary educators should consider the following practices:

1. Use both visual and auditory media.
2. When using television, offer the same information both visually and aurally.
3. Include in all materials a number to call if a disabled individual wants information about your programs in alternative formats or by alternative means.
4. As part of your marketing campaign, provide information about accessibility and special services that would be useful to disabled persons.
5. Show disabled persons in photographs used in your promotion materials.
6. When listing times and places for recruiting, identify which recruiting locations are accessible.
7. If your recruiting activities involve a large number of walk-in applicants, provide interpreters at some locations and inform the public of this fact.
8. At recruiting locations, be sure there are sufficient staff members to help disabled individuals who need assistance completing applications.
9. Make sure recruiters ask the same questions of and provide the same information to disabled and nondisabled applicants.
10. Don't place restrictions on how applications must be completed that make it hard for disabled people to apply.
11. Inform staff members that they should not make unnecessary inquiries about a person's disability.
12. If admission to your program requires testing, recruiters should describe in detail the testing procedure and the accessibility of the testing location.
13. If a disabled applicant requests modifications in the application or testing process, such as the provision of auxiliary aids or services, recruiters must know what to do and whom to contact for more information.
14. Recruiters should be aware of the general accessibility level of your campus, special services provided for disabled students and the general range of auxiliary aids and services provided.

Communication: Part B of IDEA

When communicating with the parents of children with known or suspected disabilities, Part B of IDEA places some specific obligations on schools. These include:

- Schools must tell parents about the due process rights and procedural safeguards available to them.
- Schools must communicate with parents by a means that can be understood.
- Schools must inform parents and obtain their consent when evaluating and placing disabled children.
- Schools must let the parents participate in developing the IEP. Most schools also give

parents a copy of the document, although they're not required to do so.

Obviously, schools should continue to comply with these requirements. In addition, schools also should notify disabled parents of their willingness to accommodate them during the evaluation-IEP-placement process. For example, if a deaf parent has a disabled child, it would be appropriate for the school to provide an interpreter during any meetings with school personnel.

Communication: the Perkins Act

The Perkins Act requires schools to ensure that special populations, which includes disabled students, know about vocational education opportunities that are available. This requirement suggests that schools produce information about vocational programs in alternative formats. At a minimum, schools should retain the information in formats such as computer disks that can be quickly converted to alternative formats.

Aids and Services

Requirements about providing auxiliary aids and services overlap somewhat with communications requirements, since many aids and services are used to communicate.

Schools should adopt policies on providing aids and services to disabled students. The policy should emphasize providing necessary assistance that is reasonable and effective. It also should stress meeting the preferences of individual disabled students wherever possible. There are several benefits to having a written policy:

- Having a policy will make it easier to treat disabled individuals consistently.
- Teachers will know what they must do and what help they can expect in providing assistance for a disabled student.
- Efforts to accommodate disabled students will be documented.

Obviously, such a policy cannot cover every possible circumstance. However, it can provide general guidance. If possible, educators should involve disabled people in writing the policy to maximize its practicality and usefulness.

Besides writing the policy, educators also should identify their options for obtaining needed aids and services. This process has at least three steps:

1. Identifying in-house or in-district services and resources that are available.
2. Determining what resources are available from public and volunteer agencies. These can include services from the state vocational rehabilitation office, volunteer readers sponsored by a church, the taped-books loan program from the Library of Congress, services from the American Printing House for the Blind, and at-cost services from the Braille Institute, among others.
3. Generating a list of aids and services that must be purchased or hired from external sources. An example would be an interpreter for a deaf student. The list should include approximate prices for each item or service.

Fortunately for educators trying to comply with the ADA, most schools already own a wide range of aids and devices that can help disabled students. These can include masking tape to hold paper on a desk, copiers and computers to enlarge print material, video tapes to help explain concepts visually and tape recorders to record lessons. Other useful equipment typically found in a school includes calculators, TVs and VCRs, slide and overhead projectors, tables and chairs of various sizes, step stools, clamps, telephones and fax machines.

It's a good idea for educators to inventory the equipment available in their schools. They should check:

- where the item is located;
- whether it's in working order;
- whether it's committed to a project or available; and
- whether it's portable.

(See "Assessing Performance and Needs" checklist on page 28 and "Record of Modification" on page 29).

Determining Student Needs

In identifying a disabled student's need for assistance, the procedures dictated by Part

B of IDEA will continue to be used in many cases at the elementary and secondary levels. However, in cases where Part B procedures are inappropriate or an alternative is requested, here are some basic strategies when discussing a request for assistance:

1. Ask the parent or disabled student if the student needs a modification, aid or service for any aspects of a particular class. Some sample questions might be:

   - Much of this class involves oral lecture. Do you need assistance to benefit from a lecture?
   - This class requires substantial reading. Do you need the reading material converted to an alternative format?
   - This class involves writing essays in class. Do you need help writing?
   - This class includes group projects. Do you need any aid or service to participate in these projects?
   - This class involves using two hands simultaneously to operate some machines. Can you do that?

2. Identify potential modifications, aids and services and assess their effectiveness. Also ask the disabled student if he prefers a particular type of assistance.

3. Select the assistance that is reasonable, effective and serves the individual's needs. Educators must consider the individual's preferences in providing assistance, but are free to pick an alternative method if it's just as effective.

Personal Devices and Services

The ADA does not require public and private schools to provide disabled students with personal devices and services. Examples include:

- Wheelchairs, prescription glasses and hearing aids.
- Personal attendants.
- Readers or interpreters for personal use or study.
- Services of a personal nature, such as assistance in eating, going to the bathroom or dressing.

As a practical matter, schools may find themselves providing some of these services. For example, school staff may need to help very young disabled children eat or go to the bathroom. Schools certainly are not barred from providing services beyond those required by the ADA.

Packaged Tests and Courses

Many licensing, certification and testing organizations play major roles in the educational system, yet they are not arms of state or local governments. An example is the company that administers and scores performance on the Scholastic Aptitude Test.

Before the ADA, these organizations fell outside the scope of laws protecting the disabled. The ADA's broad sweep, though, includes these organizations under Title III.

The ADA's mandate for these organizations is broad: If they offer courses or tests related to applications, licensing, certification or credentialing for secondary education, postsecondary education or professional and trade purposes, the courses and tests must occur in a place and manner accessible to disabled people. If that's impossible, they can offer alternative accessible arrangements for disabled people.

Under the ADA, the organizations may request advance notice and documentation of the need for modifications in addition to evidence of eligibility for any modification. Educators may be able to help students provide the necessary information.

The ADA's broad mandate includes specific requirements that apply separately to tests and courses.

(See "Evaluating Testing Procedures" checklist on page 30).

ADA requirements for tests:

1. **Valid and accurate measurement.** A test must be given in a manner that ensures that, when administered to a person with impaired sensory, manual, or speaking skills, the results accurately reflect the person's aptitude or achievement level. The test should be designed so the results are not affected by the

person's impairments, unless the test is designed to measure them.

2. **Convenience and timeliness.** A test designed for disabled people must be offered as frequently and at equally convenient locations as similar tests offered to others.

3. **Accessible locations.** Tests must be given at locations accessible to disabled people. Alternatively, testing authorities can make alternative arrangements such as having a test proctor administer the test at a disabled person's home.

4. **Modifications.** Test modifications may be required. For example, the test may have to be administered in a different manner than usual or additional time may have to be given for its completion.

5. **Auxiliary aids and services.** Testing authorities must provide appropriate auxiliary aids and services to people with impaired sensory, manual or speaking skills. Exceptions are allowed if complying would fundamentally alter the test's effectiveness or result in an undue burden. Auxiliary aids and services that may be required include taped tests, interpreters, tests and answer sheets in braille or large-print format, readers for people with visual impairments or learning disabilities, transcribers for people with manual impairments and similar services.

ADA requirements for courses:

1. **Accessible locations.** Organizations must either hold courses in accessible locations or provide alternative arrangements. Such alternatives could include providing the course through videotapes, audio tapes or prepared notes. Any alternative must be comparable to the course provided to nondisabled people.

2. **Modifications.** Modifications must be made to ensure that the manner in which a course is presented is accessible to disabled people. Examples include lengthening the amount of time allowed to complete a course, substituting specific requirements and adapting how course materials are prepared and distributed.

3. **Auxiliary aids and services.** The private organization must provide appropriate auxiliary aids and services to people with impaired sensory, manual or speaking skills. Exceptions are allowed if complying would fundamentally alter the course or result in an undue burden. Examples of auxiliary aids and services that may be required include taped texts, interpreters, large-print or braille texts, readers for individuals with visual impairments or learning disabilities and classroom equipment adapted for use by people with manual impairments.

Assists under Part B of IDEA

In 1990, Congress approved amendments to Part B of IDEA that require schools to provide "assistive technology devices" to students who fall under the law's 11 categories of disability. With passage of the amendments, the devices are now viewed as an integral part of a free, appropriate public education.

What's an "assistive technology device"? The amendments define it as "any item or piece of equipment or product system, whether acquired commercially or off the shelf, modified or customized, that is used to increase, maintain or improve the functional capabilities of children with disabilities."

That's obviously a rather broad definition. The amendments also require schools to help disabled students select, acquire and use such devices.

The amendments' requirements fall well within what's required under the ADA. Thus, they reinforce the idea that schools must provide disabled students with appropriate and effective devices so they can learn along with their classmates.

Planning Tip

To make planning easier, administrators should develop a procedure for identifying what modifications, auxiliary aids and services a new disabled student needs. This procedure should permit efficient decision-making so space can be scheduled and aids or services can be obtained.

Rehabilitation Counseling

The same amendments to Part B of IDEA that require schools to provide assistive devices to students who fall under the law's 11 categories of disability also require them to provide such students with rehabilitation counseling services. Just like with devices, the amendments made rehabilitation counseling part of what constitutes a free public education under IDEA.

(See "Effective Counseling Information" checklist on page 31).

Part B of IDEA defines rehabilitation counseling as "services provided by a qualified rehabilitation counseling professional, in individual or group sessions that focus specifically on career development, employment preparation, achieving independence and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended."

The ADA does not mention rehabilitation counseling.

Transition Services

The 1990 amendments to Part B of IDEA also require schools to provide transition services to students covered by the law's 11 categories of disability.

Part B's regulations define transition services as "a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation."

Part B of IDEA also requires that a description of transition services be included in Individualized Education Programs (IEPs) for students age 16 or over. It also suggests including such descriptions in IEPs for students beginning at age 14 or even younger. The description should detail transition services (including post-school goals) the student needs and, where appropriate, describe each participating agency's responsibilities.

The ADA does not specifically address transition services but requires equal opportunity under all circumstances.

Drug Use and Testing

The ADA neither authorizes nor bars schools from adopting policies aimed at ensuring that individuals who previously used illegal drugs have quit. Similarly, it takes no position on drug testing. However, the ADA makes two important distinctions about drugs:

1. It acknowledges that some people must use controlled substances authorized by prescription. For example, a student may have a prescription to use marijuana to control eye pressure caused by glaucoma. The ADA does not consider such people to be using illegal drugs.

2. The law distinguishes between the use of an illegal drug and the status of being addicted to it. The ADA protects *former* drug addicts from discrimination. However, it does not protect persons who currently use drugs, even if they are confirmed addicts, nor does it protect those who use illegal drugs occasionally.

Medical Treatment

If a disabled student is injured at school, there's nothing in the ADA allowing a guardian to decline medical treatment. Schools can go ahead and seek emergency medical services for the student.

Limits

As indicated throughout this chapter, there are limits to the actions educators must take to accommodate disabled students. These limits are often called "defenses."

As with many other requirements, the ADA is more specific than section 504. The general guideline under the ADA is that educators don't have to do anything that would

fundamentally alter a service or that would result in an undue financial or administrative burden.

Under both the ADA and section 504, smaller agencies and institutions have more defenses available than larger ones. In addition, the ADA – but not section 504 – provides more defenses to private schools than to public schools.

Here are some guidelines educators should consider when deciding how to respond to a disabled person's request for a service, auxiliary aid or accommodation:

Case-by-case approach: Educators must consider each case individually and determine what assistance should be provided to meet a particular individual's needs.

Effectiveness. The action taken should result in access and participation, but does not have to be the most expensive option.

Options. Usually, there's more than one way to provide access and participation to a student. Educators must give first priority to the student's choice, but are free to offer other options that would achieve the same result.

Availability. If there is only one effective aid, service or accommodation and it would take a long time to get it, educators may be justified in denying access or participation based on disability.

Standards. Some classes, programs or jobs demand performance at a certain level. If a disabled person can't perform at that level even with special effort by the educator, it may be justifiable to deny access or participation based on disability.

Safety. If a disabled person would pose a direct threat to himself or others that cannot be reduced by providing auxiliary aids, services or reasonable accommodation, access or participation can be denied.

Conclusion

Clearly, the ADA and the other three laws protecting the rights of disabled people have broad reaches. They touch all aspects of providing services to students.

For educators, the ADA's basic premise is simple: whenever possible, disabled students must be integrated into classes and activities with their nondisabled peers. In most cases, it will prove easier to accommodate disabled students than to explain legally why they should be denied full access.

On the following pages are several checklists for use in applying ADA requirements to school programs.

Analyzing Educational Environments

This checklist will help educators analyze their teaching methods and general classroom environment to determine if adjustments are necessary to accommodate special needs of students with disabilities.

By Time

%

_____ Time devoted to lecture.

_____ Time devoted to questions and answers.

_____ Time devoted to in-class reading.

_____ Time devoted to in-class writing.

_____ Time devoted to small group activity.

_____ Time devoted to independent study.

_____ Time spent using equipment.

_____ Time spent manipulating objects.

_____ Time directions are given orally.

_____ Time directions are given in writing.

_____ Time devoted to physical activity, such as exercising, walking or standing (specify activity):

_____

_____

By Method

Yes/No

_____ Lecture is based primarily on textbook or other written material.

_____ Questions and answers are based on simple facts tied to lecture material.

_____ Questions and answers involve application and interpretation skills.

_____ Student manipulation of objects or use of equipment depends on understanding of lecture material.

By Physical Accessibility

Yes/No

_____ In-class space can be easily rearranged.

_____ Seating is stationary.

_____ Work stations are stationary.

_____ Equipment is stationary.

Effective Information Sharing

By reviewing this checklist educators can determine if they are providing adequate information about their programs to students with disabilities. If not, steps should be taken immediately to improve communication.

- ☐ All course selection and career planning information is available in alternative formats and by alternative means.
- ☐ Any student with a question about course selection or career planning knows who to contact for help.
- ☐ Students receive information about special opportunities, events and eligibility criteria for participating in a variety of ways.
- ☐ All information about eligibility indicates who to contact if a disabled student needs the information in an alternative format.
- ☐ All information indicates if a response is required, from whom, when it is due and in what form (options are given if appropriate), as well as the consequences of not responding.
- ☐ Students with known disabilities are asked how they prefer to receive and submit information
- ☐ A school official knows about the special information needs of students with known disabilities and is responsible for ensuring that they receive information in a timely manner and usable format.
- ☐ Students with known disabilities receive information in the format they prefer.
- ☐ Students with known disabilities are permitted to respond to information in the format they prefer.
- ☐ If students with known disabilities do not respond to time-sensitive information, they are re-contacted by appropriate means.

Information for Parents with Disabilities

This checklist will help educators determine if their means of providing information to parents with disabilities is adequate.

- ☐ All information sent home clearly indicates whom to call for answers to questions, if and when a response is required, in what form (options given if appropriate) and the consequences of not responding.
- ☐ Parents with known disabilities are permitted to receive and submit information in the format they prefer.
- ☐ Counselors accommodate requests of parents with disabilities for alternative formats and methods of exchanging information.
- ☐ A school official knows about the special information needs of parents with disabilities and is responsible for ensuring that they receive information in a timely manner in the format they prefer, and when parents with known disabilities don't respond to time-sensitive information, they are re-contacted by an appropriate means.

Assessing Performance and Needs

Educators should consider the following questions to determine how many students have disabilities, the nature of their disabilities and how they're served. This checklist will help you assess your current responsiveness to disabled students and plan for future needs.

1. How many students with known disabilities have been identified?
2. How many were identified through Part B of IDEA procedures (special education) and have IEPs?
3. How many meet the ADA definition of disability but do not have IEPs?
4. How many students who meet the ADA definition of disability have requested modifications, auxiliary aids and services?
5. How many disabled students have obtained modifications, auxiliary aids and services, and what types of assistance are they using?
6. In what classes and activities are disabled students participating?
7. In what classes and activities are disabled students not participating?
8. Have we kept records of instances in which we have denied requests by disabled students for modifications, auxiliary aids or services?

Record of Modifications in Environment or Equipment

Use this form to record information on modifications needed to accommodate students with disabilities.

Description of modification:

_____

_____

Location:

_____

Purpose/function:

_____

_____

_____

Time from inquiry to delivery/completion:

_____

Cost:

_____

Special installation required:

_____

_____

_____

Training required:

_____

Maintenance required:

General: _____

_____

_____

Specialized: _____

_____

_____

Vendor used, if any (equipment only):

_____

Equipment can be used by individuals without disabilities:

☐ YES ☐ NO

Effect on instructor, if any:

_____

_____

Effect on other students, if any:

_____

_____

Any applicable comments on durability, flexibility, reliability, safety or ease of use:

_____

_____

_____

_____

External references to contact on use:

_____

_____

_____

_____

External expertise consulted:

_____

_____

_____

_____

Evaluating Testing Procedures

This checklist will help educators determine if their testing procedures are fair for students with disabilities.

☐ The student has not indicated and I do not know of any reason to modify how the test is given or how the student is expected to respond.

☐ The student has indicated or I know of reasons for modifying how the test is given and/or how the student is expected to respond.

☐ The necessary modifications will require that the disabled student:

- have more time to take the test
- be able to hear rather than read test questions
- respond by a means other than the standard test answer sheet
- have assistance from another person
- take the test at a different time than others
- take the test at a different place
- receive individualized proctoring during the test
- take another test or use some other means to demonstrate knowledge or ability that would have been reflected on the standard test

☐ This test requires performance in a specified time period in order to be valid.

☐ This test requires performance in a specified manner in order to be valid.

☐ If there is a change in how this test is administered or responses given, the use of results will be affected as follows:

_____

_____

_____

Effective Counseling Information

This checklist will help educators determine if their counseling activities are adequate to meet the needs of students with disabilities.

- ☐ During individual or group counseling sessions, students who need auxiliary aids or services have access to them.
- ☐ Counselors know how to arrange for disabled students to take standardized tests and to explain procedures, including deadlines for making necessary special arrangements.
- ☐ Information about course options and career alternatives is provided for both disabled and nondisabled students who have the same qualifications and standing.
- ☐ Counselors contribute to the identification and provision of transition services to students who have IEPs.
- ☐ Disabled and nondisabled students are exposed to career information through speakers, field trips, videos and group discussion.
- ☐ Information about accessibility and special services available at a range of postsecondary institutions is provided for disabled students.
- ☐ Information about eligibility criteria and availability of financing for postsecondary education is provided for all students.

Chapter 2

Actions Barred by the ADA

The previous chapter described what schools must do to serve disabled students. This chapter explains what they *cannot* do. Frequently, what they cannot do is simply the flip side of what they must do.

The ADA specifies numerous actions or failures to act that constitute discrimination against disabled people. In many cases, section 504 has similar or identical rules.

Basically, schools cannot do anything that discriminates against disabled people. There are some very limited circumstances where discrimination is allowed, as explained in the previous chapter. However, it's much easier not to discriminate in the first place than to later try to justify discrimination when a legal challenge arises.

Besides examining their own services, programs and activities to make sure they don't discriminate, schools also need to examine contracts with third parties. For example, a small educational agency may hire an outside psychologist to test students' eligibility for a gifted and talented program. If the psychologist is unable or unwilling to modify testing procedures to accommodate disabled students and they either perform poorly or can't take the test, discrimination occurs because they're unfairly denied access to the program. Even though the educational agency contracted the testing to the psychologist, it still may be found guilty of discrimination if a complaint is filed.

Prohibitions Under ADA

There are 13 areas of prohibition specifically addressed by the ADA. Nearly all of the ADA's prohibitions apply to both public and private schools.

Generalizations. Generalizations about disabled individuals are barred in virtually all cases as discriminatory. Every decision that affects an individual's access must be made on a case-by-case basis. Thus, it is illegal to deny participation in a computer program to all people who are blind, to deny employment as a preschool teacher to everyone who uses a wheelchair, or to deny participation in a retail sales course to all students who are learning disabled. The case-by-case approach is required under the ADA from the initial point of contact until the individual exits the system.

Denial of opportunity. Schools cannot deny a qualified disabled person the opportunity to participate in or benefit from any aids, benefits or services they offer. This mandate applies to all aspects of an educational environment, including the ability to enter a lecture hall, eat in the cafeteria, check out books in the library, attend a sports event, see what's written on the blackboard or demonstrate knowledge.

Unequal opportunity. Schools cannot offer lesser opportunities to disabled individuals than others enjoy. For example, educators cannot expect disabled students to fold towels while others participate in gym class, cannot bar disabled students from eating in the cafeteria at the same time as their peers and cannot bar disabled students from field trips.

Separate or different opportunities. Educators cannot provide separate or different aids, benefits or services for disabled students without first determining whether the adjustments are truly necessary. Educators also must determine whether the adjustments can be provided in an integrated setting.

Right to decline separate or different programs. Educators cannot deny disabled students the opportunity to participate in services and programs along with others, even if separate or different programs are available. Thus, educators cannot require qualified disabled students to take separate gym, food preparation, cosmetology or art classes or to ride the bus at a special time. This mandate reinforces two major principles of the ADA: integration and choice.

Right to decline special aids or services. Disabled individuals have the right to decline special aids offered to them. For example, they can decline a special seat, location, help or equipment. Educators must remember that disabled students, and in many cases their parents, should participate in determining what special aids or services they might need. The objective should be determining how the child can learn best. This requires flexibility by educators in finding the best method.

Use of discriminatory criteria. Schools cannot use criteria or methods of administration that discriminate against disabled individuals. Examples of discriminatory criteria include a teacher requiring that all written assignments be in cursive writing or a shop instructor requiring all students to demonstrate *and* orally explain to classmates what's wrong with a piece of equipment and how to fix it.

Discrimination through eligibility criteria. Schools cannot impose eligibility criteria that tend to screen out disabled individuals from participating in services or programs. An exception is allowed if the criteria are necessary. An example of an acceptable criterion is grade average. For example, a school can bar students with grade averages below certain levels from participating in after-school sports and clubs, as long as the same standard applies to all students.

Surcharges. Disabled students may need a range of services that impose extra costs on schools. However, schools cannot pass along these costs to the students. For example, schools cannot charge them for large-print or braille versions of textbooks, interpreter services, reader services, extra lab time the student needs for practice, a prime parking space, accessible transportation, ramps and curb cuts and similar aids and services.

Discrimination through association. Schools cannot discriminate against a nondisabled person because he has a relationship or association with a disabled person. For example, a student cannot be denied admission to a sports event because he's accompanied by a sibling who is retarded.

Retaliation. Schools cannot take a negative action against an individual because the person opposed a practice made unlawful by the ADA, filed a complaint or participated in an investigation, proceeding or hearing under the ADA. This requirement protects both disabled and nondisabled people. It addresses retaliatory behavior both by institutions and by persons acting as individuals.

Coercion. Schools and individuals cannot coerce, intimidate, threaten or interfere with any individual who exercised or is exercising his rights under the ADA. This is a companion provision to the prohibition against retaliation. It covers a wide range of situations involving disabled and nondisabled people. For example, if in a gym class a student harassed a disabled student or a nondisabled student who was helping him, it would be recognized as discrimination under the ADA. The implication of the coercion and retaliation requirements is that schools must edu-

cate officials, staff and students about the prohibitions against discrimination based on disability. If retaliation or coercion occurs, the ADA allows the victim to file a discrimination complaint or suit against the offender, whether it be an institution or individual.

Insurance. A disabled person cannot be denied insurance based on disability alone, as long as the disability does not pose increased risks. What this provision means in the context of services to disabled students is not totally clear. However, it is clear that a school that denies an opportunity to disabled students because of a fear of escalating insurance rates is guilty of discrimination.

Public Schools

A few of ADA's prohibitions apply specifically to public school programs. For the most part, the prohibitions that apply exclusively to public schools and institutions are restatements or clarifications of prohibitions that apply to both public and private schools.

Less effective opportunity. Disabled people cannot be offered less effective opportunities than those offered to others. Thus, disabled people must have an equal opportunity to obtain the same result, to gain the same benefit and to reach the same level of achievement. This provision emphasizes the importance of "outcomes" and the willingness to offer modifications and adjustments so that disabled students have the same opportunities as other students. Although this right is not specifically applied to private schools, it is certainly implied.

Aid or perpetuate discrimination by others. Schools and agencies cannot provide significant assistance to organizations or people who discriminate against disabled people. For example, a high school should not provide office space for rehabilitation counselors who refuse to work with qualified students with learning disabilities. In addition, a local education agency cannot place disabled students into a private school that denies spots to certain types of other students who qualify as disabled under the ADA, such as former users of illegal drugs.

Deny participation on planning or advisory boards. Schools cannot bar qualified disabled individuals from participating on planning or advisory boards. This requirement covers all types of boards, including student councils, PTA committees and school boards.

Undermining program objectives. Schools cannot take actions that substantially impair or defeat their efforts to serve disabled students. For example, they cannot force special education classes to eat at a time separate from other students or locate all resource rooms and special education classrooms in one corridor separate from other classrooms.

Denying opportunity through site selection. When selecting the site for a new facility, schools cannot make selections that effectively discriminate against disabled people. In addition, when scheduling, arranging for or selecting a location for any activity, educators must make every effort to make it accessible to disabled people.

Impairing program objectives through site selection. Schools cannot choose sites for activities that substantially impair or defeat their efforts to serve disabled students. For example, they cannot place labs and related classrooms on different floors if doing so would make it hard for students with mobility impairments to reach them quickly. They also cannot give SAT tests in an old, historical building, even if it's centrally located, if students in wheelchairs cannot access it. And they cannot offer signup for a special opportunity in a noisy environment like the back of a cafeteria because doing so would make it hard for learning disabled and hearing impaired students to give and receive necessary information.

Discriminating through contract procurement. In procuring contracts, schools cannot use criteria that discriminate against qualified disabled people. This means that contractors who are disabled or who employ disabled individuals have as much right to be considered for contracts as others.

Chapter 3

Identifying Children with Disabilities

Over the coming years, the ADA is likely to become the principal vehicle disabled people will use to secure their rights. If this happens, the importance of Part B of IDEA in securing rights could be affected.

The ADA, rather than Part B of IDEA, may become the law of choice to secure a free, appropriate public education for many students with disabilities who are sensory or mobility impaired — especially those who have been in school for years and whose needs are well documented. The reason is that such individuals often only need auxiliary aids and services or simple environmental modifications. Since the ADA suggests they can secure aids, services and modifications directly and quickly through its guarantees, they and their parents are likely to avoid using the time-consuming administrative processes available under Part B.

Nonetheless, at least for now, many requirements under Part B of IDEA remain important. Besides familiarizing themselves with these requirements, educators also need to know the areas in which the ADA affects them.

Child Find

Part B of IDEA requires school districts to make proactive efforts to identify disabled children. However, districts only need to identify children who qualify as "disabled" under IDEA's definition, which is much narrower than the ADA's definition.

As explained in Chapter 1, the IDEA definition of disability has two parts:

1. The child must have one of 11 conditions: mental retardation, hearing impairments, speech impairments, language impairments, visual impairments, serious emotional disturbances, orthopedic impairments, autism, traumatic brain injury, specific learning disabilities or other health impairments that harm the child's educational performance.

2. Because of the condition, the child must need both special education and related services. "Related services" include speech therapy, occupational therapy, psychological counseling and similar services.

To meet Part B's requirement that they identify children meeting the above definition, school systems have developed Child Find. It's a process to identify, locate and evaluate children who might qualify for services under Part B's definition. School systems must identify children from birth through age 21 who need special education and related services. As of school year 1992, state education agencies and local education agencies also are required to offer education services to disabled preschoolers between three and five years old.

Part B of IDEA has specific requirements for evaluating children to see if they're eligible for special education and related services. These requirements include:

- Multiple procedures must be used to determine an appropriate education program for a child.
- The evaluation must be conducted by a multidisciplinary team that includes at least one individual familiar with the suspected disability.
- All areas related to the suspected disability must be assessed. Depending on the specific case, this can involve evaluations of the child's general health, vision, hearing, intelligence and other areas.
- Evaluators must use tests that give a valid indication of the child's aptitude and achievement and are not distorted because the child has impaired sensory, manual or speaking skills. The only exception involves tests to measure the nature and extent of such impairments.
- A comprehensive reevaluation must be conducted every three years.
- If a child only has a speech impairment, a full battery of tests may not be needed.
- If evaluators either suspect or know that a child has a specific learning disability, additional requirements are imposed. The evaluation team must be expanded, specific evaluation criteria must be used, classroom observation is required and an evaluation report must be written.

Child Find and the ADA

Child Find activities are certainly compatible with the ADA's spirit and intent. However, the ADA affects several major aspects of Child Find and providing services under Part B of IDEA. These include:

Communication: Educators should consider advertising Child Find activities in new ways that are accessible to disabled people. For instance, they should provide information in big-print pamphlets, in pamphlets written in simplified English, on audiotapes and through recorded information available by telephone.

Accessibility: Educators should ensure that screening activities are accessible to disabled individuals. For example, they should ensure that screening activities are held at accessible locations and that interpreters are provided if requested.

Special education *and* related services: To be eligible under Part B of IDEA, a child must need both special education *and* related services. Thus, in most cases a child cannot access a related service such as speech therapy or psychological counseling unless he also requires special education. To increase the number of children who can get services, some states have adopted a loose interpretation under which any related service qualifies as special education. States that have done this in all or most areas are in line with what the ADA expects. Those that still use strict interpretations may want to reconsider this issue.

Ability to benefit from education: Under Part B of IDEA, educators must offer services to disabled children who possess "the ability to benefit from an education." The ADA may require educators to change their view about which children this includes.

In some cases, educators have argued that children require medical services *before* they can benefit from special education. For example, some children who are severely emotionally disturbed have been denied access to education until they received appropriate treatment. In other cases, educators have argued that certain children with severe cognitive impairments cannot benefit from education and need caretaking instead.

The ADA does not help resolve the fundamental policy issue of defining who can benefit from education. Legal action under the ADA may force this issue. In the meantime, the wisest move for educators is to offer services in diverse settings that in some cases

may be unorthodox. Examples include hospitals for the mentally ill or mentally retarded, detention centers and jails. If educators are willing to offer something rather than nothing, they're less likely to be found at fault legally under the ADA.

Fiscal disincentives for serving children: Current fiscal disincentives for identifying children under Part B of IDEA conflict with the ADA's inclusive nature.

Each year, states receive a certain amount of federal money for every child with an Individualized Education Program (IEP) under Part B of IDEA. The amount varies each year, ranging from 7 percent to 11 percent of a state's extra cost for educating disabled children. If the total amount of federal money available each year remains constant, states have a disincentive to identify more children with disabilities. The reason is that with more children, the available dollars are spread thinner.

In addition, the federal government caps the amount it gives to states. It provides funds for only up to 12 percent of a state's school-age population. If a state identifies 13 percent or more of its students as needing IEPs, it still receives funds for only the first 12 percent.

For now, there's no clear-cut solution to resolving the conflict between Part B of IDEA and the ADA. Using the ADA as leverage, educators may want to seek increased administrative flexibility in how they approach eligibility, identify a child's needs and respond to them.

Individualized Education Program (IEP): The IEP is a powerful document. It's designed by a team of professionals, the child's parents and, where appropriate, the child. It both describes what services a disabled child will receive and defines the limits of the services. If a service isn't in the IEP it is perceived as not being necessary or required.

For at least the foreseeable future, IEPs probably will be the vehicle of choice for working through the needs of children with complicated needs or with needs that are changing due to disability and/or age. The IEP process represents an opportunity to create a positive environment for parents and to make them cooperative partners in educating their child. In most cases, parents will not circumvent the IEP process unless it's not working. However, if parents have negative experiences with the IEP, they may prefer a short cut to getting what they want for their child and use the ADA as their legal weapon.

Responding to students with limited needs: Many disabled students function at grade level and have limited needs for adjustments. In addition, some of these adjustments are minor. The student may need more time to complete a test, permission to print instead of writing with cursive letters, big-print textbooks, an interpreter for some classes or speech or physical therapy.

If an educator knows that a student's needs are limited and relatively easy to meet, it probably doesn't make sense to put the student and his parents through a formal IEP process every year. It appears more reasonable to place such students in regular classrooms instead of referring them to special education and use ADA as the legal justification for meeting their needs directly. Moreover, the ADA provides an incentive to move students out of special education while maintaining their auxiliary aids and services. However, educators should note that firm guidance on the IEP issue is not yet available.

Chapter 4

Perkins Title II Requirements

Previous chapters have outlined what steps educators must take to serve students with disabilities. All these requirements apply to the vocational education setting as well. However, Title II of the Perkins Act also affects services to disabled students. This chapter will discuss these Title II requirements and how they interact with requirements under the ADA.

The ADA provides a legal impetus to broaden the scope and focus of vocational education for disabled students. In the past, some disabled students — particularly those with cognitive impairments — have been taught in segregated settings. In addition, high school courses frequently have not been directed toward further education or the acquisition of a job. That's all in the process of changing.

The combination of ADA requirements, Part B transition services requirements and the Perkins Act special populations provisions offers exciting opportunities to transform limited secondary experiences into meaningful opportunities for disabled students. New programs such as tech prep can help vocational educators meet the challenge of serving disabled students.

The Perkins Act

The Carl D. Perkins Vocational and Applied Technology Education Act of 1990 provides money to states for vocational education programs. The Perkins Act discusses disabled students in two contexts:

1. As members of "special populations," a group that also includes students who are educationally and economically disadvantaged, students with limited English skills, students in foster care or correctional institutions and students participating in programs to eliminate sex bias.

2. As a distinct group to which additional requirements apply. These requirements are derived from the ADA, section 504 and Part B of IDEA.

The Perkins Act repeatedly refers to disabled students, often under the umbrella of "special populations." For example, among other provisions, Section 235 requires recipients of basic grant funds to:

- Provide for full participation by members of special populations, including making

Student Safety

Perhaps the overriding concern about disabled students in vocational education programs is whether they can participate safely. As stated earlier, schools can impose legitimate safety requirements as long as they're not based on fears, stereotypes or assumptions about disabilities. In deciding whether a disabled student can safely participate in a vocational education program, keep three things in mind:

1. All decisions must be made on an individual basis.
2. All decisions must be based on facts that can be documented.
3. The single relevant issue is whether the level of risk can be lowered to an acceptable level with adjustments in a specific setting.

adjustments so that disabled students can participate.

- Give funding priority to sites or programs that serve the highest concentrations of special populations.
- Provide equitable participation for special population students so they have the same opportunity to enter vocational education as other students.

The many references throughout the Perkins Act to disabled individuals and professionals who work with them are important. They should help justify and reinforce broad-based compliance with the ADA.

Full Participation

The Perkins Act requires "full participation" in vocational programs by members of special populations, including disabled students. Schools must offer "supplementary and other services" needed to enable special population students to enter vocational programs. Examples of such services include assessments and guidance counseling.

Under the Perkins Act, neither states nor recipients of funds such as local education agencies are required to use non-federal funds to provide supplementary services to special population students. However, the ADA may make this regulation a moot point as regards disabled students. The ADA, being a civil rights law and not a state grant program, doesn't care where money comes from to finance services and activities for disabled students. It just requires that the services and activities be provided.

What are the "other services" the Perkins Act requires schools to provide for members of special populations? They include the following:

- helping members of special populations enter vocational education programs and fulfill Part B transition requirements;
- assessing the special needs of special population students participating in the state program;
- providing guidance, counseling and career development for special populations; and
- providing counseling and instructional services to help special populations make the transition from school to work.

Obviously, this list is quite broad. It requires a wide range of services to disabled students, services that are entirely consistent with the ADA.

Special Information Requirements

The Perkins Act imposes special information demands on all recipients of basic state grants under Title II. These grant recipients must provide information to students who are members of special populations and their parents about:

- opportunities available in vocational education;
- eligibility requirements to enroll in vocational education programs;
- special courses that are available;
- employment opportunities; and
- placement.

This information must be provided:

- in general, one year before a student is eligible to enroll in a vocational education program, but no later than the beginning of ninth grade;
- when an individual requests it; or
- when an individual seeks to enroll in the program.

To the extent possible, the information must be provided in a language and format that students and their parents can understand. In addition, if requested to do so a grantee must provide assistance in completing an admission application.

The Perkins Act specifies that, unless required to do so by other applicable laws, recipients do not have to spend non-federal money on information-related requirements. However, once again the ADA may make this provision moot regarding disabled students. Moreover, failure to provide information due to the lack of federal funds is not a viable defense under the ADA.

State Plans

To qualify for federal funds, state plans must contain specific assurances regarding special populations in general and disabled individuals in particular.

The assurances regarding special populations include:

Equal access. States must assure that special populations have equal access to recruitment, enrollment and placement activities.

Full range. States must assure that members of special populations have equal access to the full range of vocational education programs available to others. This includes occupationally specific courses of study, cooperative education, apprenticeship programs and comprehensive career guidance and counseling services.

Supervision. States must assure that programs will be supervised by individuals in the state agency or board that is responsible for members of special populations.

Standards. States must assure that programs will meet standards of the state educational agency or board.

The above assurances do not conflict with ADA requirements. One area of potential risk may be state standards. If state standards include qualifications for entering or leaving programs, state education agencies and boards should ensure that the qualifications do not discriminate against disabled people.

State plans also must give additional assurances that apply specifically to disabled individuals:

Integration. Vocational education must be provided in the least restrictive environment. If appropriate, vocational education should be included as a component of a student's IEP.

Part B students. Vocational education students who have IEPs must be afforded the rights and protections guaranteed under Part B of IDEA. These include nondiscrimination in testing, access to integrated services and the right to access Part B complaint procedures, among others.

Non-Part B students. Disabled students who are not eligible for IEPs must be afforded the rights and protections guaranteed by section 504. Such rights and protections include the right to access supplementary services such as curriculum modifications, classroom modifications, support personnel and instructional aids and devices.

Coordination. Vocational education planning must be coordinated among representatives of state vocational education, special education and vocational rehabilitation agencies.

Monitoring. For students with IEPs, the provision of vocational education must be monitored to ensure it's consistent with their IEPs.

Supervision. Supervision of disabled students must be carried out consistent with, and in conjunction with, supervision by the state educational agency or board responsible for Part B of IDEA.

Chapter 5

Administrative Requirements

The ADA and section 504 each contain four broad administrative requirements for public institutions. These requirements vary slightly under the two laws, primarily in defining who must comply.

The two laws require that public institutions:

1. prepare a self-evaluation;
2. designate an individual to oversee compliance;
3. develop a transition plan if structural changes are needed to achieve program accessibility;
4. develop a grievance procedure to handle complaints of discrimination based on disability.

The ADA has a fifth requirement: Educational institutions must inform the public about the ADA.

Under Section 504, private educational institutions that receive federal funds and have 15 or more employees also must perform self-evaluation and develop transition plans. The ADA urges, but does not require, *all* private institutions to prepare self-evaluations and transition plans. Private institutions do not have to comply with the other administrative requirements. However, they would be wise to comply with all the requirements to avoid problems.

This chapter will explain exactly who must comply with the administrative requirements under each law and what they must do.

Self-Evaluation

Self-evaluation requirements are identical under the ADA and section 504 for educational institutions. The ADA requirement applies to public institutions that have 50 or more part-time and full-time employees. The section 504 requirement applies to public and private institutions that receive federal money under section 504 and have 15 or more part-time and full-time employees. Obviously, the thresholds are so low that virtually all school districts and other educational organizations must comply.

Under both laws, public institutions have to evaluate their current services, policies and practices to see if they discriminate against

disabled people and modify those that do so. Under the ADA, institutions that previously conducted self-evaluations under section 504 only have to evaluate policies and practices not covered in the earlier effort. The ADA required that public institutions complete their self-evaluations by January 26, 1993.

In conducting a self-evaluation, educational institutions must provide an opportunity for disabled individuals and organizations representing them to participate by submitting comments. No public hearings are required as long as some other procedure exists for soliciting and receiving comments. (See the "General Assessment of ADA Compliance Status" checklist on page 48).

The self-evaluation should examine the following factors:

Physical barriers. Programs cannot have physical barriers that block access. The evaluation should identify any steps necessary to make programs accessible. If structural changes are needed, they should be included in the transition plan. (Transition plans are discussed later in this chapter and in Section 2).

Building and construction compliance. Building and construction policies must ensure that the construction of new facilities or parts of facilities, in addition to alterations of existing facilities, conforms to the ADA's standards. (The ADA's standards are discussed in Section 2).

Participation. Policies and practices cannot exclude or limit the participation of disabled individuals. Any exclusionary policies must be modified unless they're necessary for operation of the program. The self-evaluation should identify policy changes to be made and include justifications for any exclusionary policies that will not be changed.

Information access. Communications with disabled students, job applicants and members of the public must be as effective as communications with others. If an institution communicates by telephone, it must install TDDs or equally effective telecommunications systems to communicate with persons with impaired hearing or speech.

Aids and services. School policies must provide readers for individuals with visual impairments, interpreters or devices such as braille books for those with visual impairments and transcribers for those with manual impairments. A method for securing these services and aids should be developed, including guidance on when they will be provided. In addition, all equipment used in a program should be assessed to ensure that it's usable by disabled individuals, particularly those with hearing, visual and manual impairments. Schools also should have policies to ensure the equipment remains in working order.

Access to public meetings. Educational institutions should ensure that individuals with mobility impairments can attend public meetings.

Evacuation. Plans for evacuating disabled individuals during an emergency should be reviewed. Schools may have to install visual and audible alarms and adopt special procedures for helping disabled individuals leave a building during an emergency.

Characterization of disabled individuals. All written and audiovisual materials produced by a school should be reviewed to ensure that disabled people are not portrayed in an offensive or demeaning manner.

Decision-making process. Schools should review their policies to ensure that when a decision is made to deny access to a disabled person, the decision is made properly and promptly.

Employment. Schools should review their employment practices to ensure they comply with ADA nondiscrimination requirements.

Self-Evaluation Files

Educational institutions must maintain their self-evaluation for three years and make it available for public inspection. The file should contain:

- a description of areas evaluated.
- a list of any problems identified.
- a list of individuals consulted during the self-evaluation.

(Employment requirements are discussed in Part 3 of this guide).

Employees informed about ADA. Schools must ensure that employees are familiar with policies requiring full participation by disabled individuals. If appropriate, training should be provided to employees.

Former drug users. If schools limit or deny participation in their programs by drug users, they should make sure the policy does not discriminate against former drug addicts. Former drug addicts are protected by the ADA, while current users of illegal drugs are not.

Compliance Official

Both the ADA and section 504 require public educational institutions to designate an employee to coordinate compliance efforts. This employee is responsible for investigating any complaints.

Under the ADA, public institutions with 50 or more employees must comply. Under section 504, any institutions receiving section 504 money that have 15 or more employees must comply. In addition, section 504 requires institutions with less than 15 employees to comply if doing so would not impair the institution's ability to provide services.

The ADA — but not section 504 — requires an institution to make the name, address, and telephone number of its compliance official available to the public.

Transition Plan

Institutions must develop transition plans if structural changes are needed to achieve program accessibility. Under the ADA, public institutions with 50 or more employees must comply. Under section 504, public and private institutions receiving section 504 money that have 15 or more employees must comply.

The transition plan should review physical accessibility, identify reasonable changes that need to be made and set priorities and timetables for completing the work. The ADA required public institutions to complete transition plans by July 26, 1992.

Grievance Procedures

Institutions must develop grievance procedures for handling complaints under both the ADA and section 504. Under the ADA, public institutions with 50 or more employees must comply. Under section 504, any institutions receiving section 504 money that have 15 or more employees must comply. In addition, institutions with less than 15 employees must comply if doing so would not impair the institution's ability to provide services.

The grievance procedure must offer "prompt and equitable" resolution of complaints. As long as schools meet that standard, they're free to develop grievance procedures however they wish. In developing grievance procedures, schools should keep in mind that individuals filing complaints do not have to use or exhaust local grievance procedures before filing their complaint with a federal agency or pursuing it in court.

Section 504 allows, but does not require, institutions to give applicants for employment or for admission to postsecondary educational institutions access to their grievance procedures. The ADA is silent on this issue.

It's unclear how the grievance provision under the ADA and section 504 affects the due process procedures under Part B of IDEA.

Public Notice

The ADA — but not section 504 — requires public educational institutions with 50 or more employees to inform the public about the ADA and how the law affects the institution's services and programs. Schools can comply with this requirement by preparing handbooks or manuals, posters, pamphlets or information for broadcast. In disseminating the information, educators must comply with the ADA requirement that communications be offered in alternative formats such as large print or audio tapes.

General Assessment of ADA Compliance Status

Use this checklist to conduct a general assessment of your educational institution's compliance with the ADA.

General Actions

- ☐ Developed and disseminated information on the ADA, including information in accessible formats.
- ☐ Designated responsible official(s) to assure that programs are in compliance with the ADA.
- ☐ Have developed grievance procedures.
- ☐ Sought input from disabled individuals and organizations representing them.

Actions Tied to Self-Evaluation

- ☐ Reviewed policies and practices to determine whether any exclude or limit participation by disabled individuals.
  - a. Made necessary modifications in policies and practices where doing so did not substantially interfere with operation of a program, service or activity.
  - b. Prepared and filed justifications for excluding disabled individuals where appropriate.
- ☐ Reviewed, and modified where necessary, policies and practices that excluded former drug users from participation in programs or access to services.
- ☐ Reviewed policies to ensure that communication with disabled applicants, participants and members of the public occurs in a manner that is as effective as communication with others.
- ☐ Reviewed policies to ensure they include provisions for providing auxiliary aids or services to assist students with visual, hearing or manual impairments.
  - a. Methods for securing necessary aids and services are in place.
  - b. Guidance on when and where these aids and services will be provided is developed and disseminated.
- ☐ Reviewed policies and procedures to ensure that people with mobility impairments can access public meetings.
- ☐ Reviewed procedures for evacuating disabled individuals during an emergency.
- ☐ Reviewed written and audiovisual materials to ensure that disabled individuals are not portrayed in an offensive or demeaning manner.
- ☐ Reviewed policies to ensure that when a decision is made to deny access to disabled individuals, it is made properly and promptly.
- ☐ Reviewed employment practices to ensure they comply with ADA nondiscrimination requirements.
- ☐ Took measures to ensure that employees are familiar with policies and practices for full participation by disabled individuals.

Chapter 6

Complaints and Enforcement

This chapter outlines complaint and enforcement procedures required by the ADA in all situations other than employment. Employment discrimination will be covered in Part 3 of this guide.

As stated earlier, the ADA is the broadest-based statute guaranteeing the rights of disabled individuals. Because of the ADA's far-reaching scope and its relatively simple complaint procedure, most disabled people who believe they've been discriminated against will likely file their complaints under it rather than under other laws.

The ADA's enforcement procedures build on those under section 505 of the Rehabilitation Act (which details compliance procedures for section 504). Section 505, in turn, incorporates by reference the enforcement procedures found in Title VI of the Civil Rights Act of 1964. For educators, the net result is that those who are familiar with enforcement procedures under section 504 can expect the same procedures under the ADA.

Although schools are expected to comply with the ADA and section 504, federal agencies will not conduct general compliance monitoring. Instead, the appropriate agencies will investigate specific complaints.

However, schools have strong incentives to comply because losing a complaint can be extremely costly. Public educational institutions that are found guilty of discrimination can lose all of their federal funds. Private institutions found guilty of discrimination can be required to pay actual damages and federal fines of up to $50,000 for the first offense and $100,000 for subsequent offenses. In addition, both public and private institutions that lose in court have to pay all attorney's fees.

Disabled individuals who believe they've been discriminated against don't have to initiate or complete a local administrative proceeding before heading to federal court. This provision applies to complaints against either public or private institutions.

The remaining complaint procedures and enforcement actions differ for public and private institutions.

Public Institutions

Complaints can be filed by individuals who believe they or a class of individuals have

Complaints Under Part B of IDEA

Individual Complaints

While most disabled people who feel they've been discriminated against will file complaints under the ADA, some may use Part B of IDEA. Its system for handling discrimination complaints is slightly different than the one used by section 504 and the ADA.

Part B allows either parents of disabled students or school officials to file a complaint. By contrast, section 504 and the ADA only allow disabled individuals or their representatives to file complaints.

Part B also establishes a formal administrative review process that has either one or two tiers, depending on the state. Complainants have the option of ultimately taking their action to court.

Compliance Reviews

Finally, state education agencies that receive Part B funds must submit to periodic program compliance reviews and fiscal audits. The U.S. Department of Education conducts these reviews to establish that the state education agency and its local education agencies have complied with Part B's programmatic and fiscal requirements. Such audits are not required under the ADA or section 504.

been discriminated against because of disability. Either the individual who was allegedly discriminated against or his authorized representative can file the complaint.

Complaints can be filed with any federal agency, all of which must forward education-related complaints to the U.S. Department of Education's Office of Civil Rights for investigation. The complaint must be submitted within 180 days of the alleged discrimination unless the Department of Education extends the deadline for good cause. Good cause might be found in various circumstances, such as when an individual attempted to resolve the complaint first through the local institution's grievance procedures.

Once it receives a complaint, the Department of Education investigates and attempts to resolve the issue informally. If the informal attempt fails, the department issues a "Letter of Findings" that includes:

- findings of fact and conclusions of law;
- a description of what the institution must do to resolve each violation found; and
- a notice of rights available to the complainant, such as the right to sue in court at any time.

Besides issuing the letter, the Department of Education also notifies the Department of Justice and embarks on formal negotiations with the institution to try to achieve voluntary compliance. At this stage, any voluntary compliance agreement must:

- be in writing and signed by both parties;
- address each violation;
- specify the corrective or remedial action to be taken and a timetable for completion;
- provide assurance that discrimination will not recur; and
- provide for enforcement of the agreement by the attorney general.

If voluntary compliance efforts fail, the Department of Education must refer the matter to the attorney general with a recommendation for appropriate action. Such action can include the filing of a lawsuit in federal court. The Department of Education also can terminate federal funds to the institution after an administrative hearing.

Private Institutions

A disabled individual can proceed against private institutions in two circumstances:

1. If he believes he's being discriminated against.

2. If he has reasonable grounds to believe that he is about to be discriminated against. For example, he might believe that blueprints or floor plans for alternations or new construction discriminate because they don't provide proper access.

In either case, the individual can file a civil suit seeking preventive relief such as a temporary or permanent injunction or restraining order. If the individual filing suit requests it, the court can appoint an attorney to represent him. In addition, the court can permit the attorney general to intervene in the civil suit if the attorney general certifies that the case is of general public importance.

The court can order a wide range of injunctive relief if it finds the private institution guilty of discrimination. The court can require private institutions to:

- alter facilities to make them readily accessible and usable by disabled individuals;
- provide an auxiliary aid or service;
- modify a policy; or
- provide alternative methods for disabled individuals to complete a task.

The court also can impose fines of up to $50,000 for the first offense and $100,000 for each subsequent offense and require the payment of actual damages. In deciding the level of fines, the court must consider the private institution's ability to reasonably anticipate the disabled individual's requirements. For example, if five students in wheelchairs all try to enroll in a computer class that only has one accessible classroom space, a school would be justified in claiming it couldn't reasonably anticipate the demand if few students who use wheelchairs had previously enrolled in the class.

A disabled person who believes he has been discriminated against by a private educational institution also can ask that the attorney general investigate. If the attorney general has reason to believe there may be a violation, she can begin a compliance review.

Either during or following the review, the attorney general can file a lawsuit in federal district court if:

- any person or group is discriminating in violation of the ADA; and
- the group or person is discriminating in a way that raises a general issue of public importance.

The attorney general also can initiate suits directly if she has evidence of a pattern of discrimination based on disability.

Answering Complaints

Once a complaint arises, school officials should be able to document the following:

- All applicants and students, including the complainant, are judged using the same criteria.
- All applicants with the same qualifications and students with the same educational needs and interests are offered the same opportunities.
- Once the need for accommodation arose, staff discussed options with the complainant.
- Staff offered reasonable and effective options to the complainant.

If such steps can be documented, the institution should be in a strong position to defend itself against any complaint.

Section 2

Making Facilities Physically Accessible

Introduction

Section 2 examines what educational institutions must do under the ADA to make their facilities physically accessible to disabled individuals. The ADA requires that all public and private educational facilities be accessible to students, parents, job applicants, staff members and members of the community with disabilities.

Here's an overview of the information you'll find in each chapter:

Chapter 7: Physical Accessibility

Briefly describes the ADA's physical accessibility requirements and how they vary for public and private institutions.

Chapter 8: Accessibility Guidelines

Outlines major requirements of ADAAG, the chief standard for making facilities physically accessible.

Chapter 9: Accessibility Audits of Existing Facilities

Explains how to use ADAAG to identify barriers to accessibility in existing buildings.

Chapter 10: New Construction and Alterations

Describes the ADA's construction requirements for both public and private institutions.

Chapter 7

Physical Accessibility

The ADA requires that educational institutions make both their existing and new facilities accessible to and usable by disabled individuals. The requirement covers all facilities, including schools, school grounds, administrative offices, interior special-purpose areas such as auditoriums and exterior special-purpose areas such as football stadiums, among others. The facilities must be accessible to disabled students, job applicants, staff members, parents and members of the public.

It is not enough for an administrator to say, "We don't have any students in wheelchairs now, so we'll install ramps when one enrolls." Instead, the ADA requires schools to make modifications now whether or not disabled individuals currently use the facilities.

The ADA does not specify exactly how much schools must do to make their facilities accessible. A standard of "at least one" is suggested, although not specified. Under this standard, disabled students should be able to enter the school through at least one door but don't have to be able to go through all of them. Similarly, they should be able to access at least one chemistry lab but don't have to be able to access all of them.

Accessibility requirements vary somewhat for public and private facilities. As explained in Chapter 1, the most important difference is that what constitutes a "reasonable modification" for a public school may be considered unreasonable for a private school. The ADA suggests that three differences exist between obligations of public and private schools:

1. Public schools usually have more options because they have multiple facilities. With more options available, public schools have a greater obligation to provide access. Private schools may have limited options because they have to work within the constraints of a single site, and thus have a reduced obligation to provide access.

Maintaining Accessibility

Besides making their facilities accessible, both public and private institutions also must *maintain* accessible features in working order. For example, they must ensure that ramps do not deteriorate. The ADA allows temporary disruptions in accessible features, such as elevators, for maintenance and repair.

2. For public schools, shifting a class location or removing a barrier does not necessarily lead to additional costs. Such actions by private schools often can lead to extra costs, reducing their obligation to provide access.

3. Ensuring physical access often requires removing barriers or offering alternatives to barrier removal. Public schools must make such modifications unless doing so would create an undue financial or administrative burden. Private schools, on the other hand, only have to make "readily achievable" modifications, defined as being both easy and inexpensive. For example, it may be too expensive for a private school to install a ramp with the degree of slope required under the law. In this case, the school would be allowed to install a ramp with a steeper slope than the law allowed. However, any alternative measures must not pose a significant risk to the health or safety of disabled individuals.

In determining whether an action is "readily achievable" by a private school, the following factors should be considered:

- the nature and cost of the action needed;
- the overall financial resources of the organization that owns the facility, the number of employees, the action's effect on expenses and resources, the action's effect

"Readily Achievable" Barrier Removal

The ADA provides the following examples, applicable to private institutions, of barrier removals that are "readily achievable":

- installing ramps
- making curb cuts in sidewalks and entrances
- repositioning shelves
- rearranging tables, chairs, vending machines and other furniture
- adding raised marking on elevator control panels
- adding flashing alarm lights
- widening doors and installing offset hinges to widen doors
- installing accessible door hardware, such as knobs that open with downward pressure rather than turning
- installing grab bars in toilet stalls
- rearranging toilet partitions to increase maneuverability
- insulating sink pipes to prevent burns to the legs of wheelchair users
- installing a raised toilet seat
- installing a full-length bathroom mirror
- repositioning the paper towel dispenser
- creating accessible parking spaces
- installing an accessible paper cup dispenser at inaccessible water fountains
- removing high-pile carpeting

Private institutions may not be able to make all of these changes or to make all of them at once. The ADA establishes priorities for implementing "readily achievable" barrier removal:

1. Provide access to the facility through accessible parking, ramps, widened entrances and similar features.
2. Provide full access to the facility's services through rearranging space, installing directional signs with raised and braille letters, widening interior doors, installing interior ramps, installing visual alarms and similar actions.
3. Provide access to rest rooms.
4. Provide greater access to services offered in the facility through other measures.

on safe operation of the facility and any other impact on the facility the action might have;

- the administrative or fiscal relationship of the facility to any parent corporation or organization;
- if applicable, the overall resources of the parent corporation or organization, the number of employees and the number, type and location of other facilities controlled by the parent corporation or organization;
- if applicable, the type of operation of any parent corporation or organization, including the composition, structure and functions of its work force.

These factors indicate that what's "readily achievable" can vary for different sizes and types of organizations. For example, a single-site school would have fewer obligations than a large, multi-site institution.

If a private institution cannot readily remove a barrier, it must take alternative actions that are readily achievable to make its services and activities accessible. For example, it may not be "readily achievable" for a private school to rebuild its library stacks so that persons in wheelchairs can access them. Instead, the school can instruct librarians to retrieve books for students in wheelchairs.

The "readily achievable" standard applies to private institutions only when they're removing barriers from current facilities. When they make structural alterations or build new facilities, they must comply with the Americans with Disabilities Accessibility Guidelines (ADAAG). The guidelines were developed by the Architectural and Transportation Barriers Compliance Board.

At least for now, public schools have the option of complying with either the ADAAG requirements or the Uniform Federal Accessibility Standards (UFAS) when removing barriers, making structural alterations, or building new facilities. On the following two pages is a brief comparison of some ADAAG and UFAS requirements. In general, ADAAG is more detailed than UFAS. Eventually, the Department of Justice plans to require that all schools, both public and private, comply with ADAAG.

While ADAAG contains numerous detailed requirements, it does allow some flexibility. For example, it recognizes the concept of "equivalent facilitation." This means that schools don't have to follow every requirement absolutely to the letter, as long as what they provide is equally accessible. For example, an elevator in a current facility might not meet ADAAG's width requirement. However, if disabled individuals can use the elevator, it would be considered in compliance with the ADA.

It makes sense for public schools to comply with ADAAG now rather than waiting until doing so is required. Because of this, ADAAG is used as the basis for the accessibility checklists presented in Appendix C.

Historical Properties

Under the ADA, educational institutions that offer classes or services in historical facilities are not expected to take actions to make the property accessible that would threaten or destroy its historical significance. The ADA defines historical facilities as those which are on the National Register of Historic Places, are eligible for inclusion on the National Register, or are designated as historic under state or local law. In many cases, the best way to make the class or activity accessible is to move it to another location.

A Brief Comparison of ADAAG and UFAS

COMPONENT	ADAAG	UFAS
Work Areas	Requires that work areas used only by employees be designed so that disabled individuals can approach, enter and exit.	Contains no special requirement for work areas. Standards apply to all areas used by the public or employees.
Exemption in Alterations	Accessibility not required if technically infeasible, such as when compliance would require removal of a load-bearing structural member or when existing physical or site constraints prevent compliance. **Cost cannot be a consideration.**	Accessibility not required if compliance requires removing a load-bearing structural member or complying would boost the involved component's cost by 50 percent or more.
Additions to a Facility	Any addition is considered an alteration and must comply with alteration requirements.	Has specific requirements that apply to additions. If an addition does not have an accessible entrance, an accessible route from the addition through the existing facility must be provided.
Elevator and Platform Lifts in New Construction and Alterations	Any public building of two stories or more must have elevators. Platform lifts may be used instead of elevators under certain conditions and may always be used in alterations. Disabled individuals must be able to enter, operate and exit a lift without assistance.	Platform lifts may be substituted for elevators in new construction and alterations. Lifts must allow unassisted entry and exit, but don't have to allow unassisted operation.
Signs	Signs designating permanent rooms and spaces must have raised and braille letters, comply with finish and contrast standards, and be mounted at certain locations and heights. Signs that provide direction to or information about functional spaces must comply with proportion, finish, and contrast standards, but don't have to have raised or braille letters. Signs must use international symbols of accessibility.	Permanent signs must have raised letters, although braille is not required. The standard international symbol of accessibility must be used.
Entrances	Fifty percent must be accessible, with certain qualifications. There must be accessible entrances to enclosed parking, pedestrian tunnels and elevated walkways.	Imposes extensive requirements that in most cases would require that all entrances be accessible.
Areas of Rescue Assistance or Refuge	Generally required on every floor and by each exit (as required by local fire codes). Has specific requirements for location, size of space, stairway width and communication.	Accessible routes must serve as a means of exit or connect to an accessible place of refuge.

COMPONENT	ADAAG	UFAS
Assembly Areas:		
Wheelchair Seating	Any assembly area that seats more than 4 must have a certain number of wheelchair spaces based on capacity, offer comparable sight lines, and provide space for companions.	Triggered if area seats 50. Seating must be dispersed and provide comparable sight lines.
Assistive Listening Devices	Requires assistive listening devices based on seating capacity, requires posting of international accessibility sign for assistive listening devices.	Areas with audio-amplification systems must have a listening system that serves a reasonable number of people, but at least 2. Does not require sign indicating availability of assistive listening devices.
Bathrooms	Every public and common use bathroom must be accessible. Generally only 1 stall must be accessible (space 60 inches by 60 inches). When there are 6 or more stalls, there must be 1 accessible stall and 1 that is 36 inches wide.	Same standards as ADAAG, except that when there are 6 stalls, no requirement that an additional stall be 36 inches wide.
Visual Alarms	Specifies technical requirements (type of lamp, color, intensity and location), including rate of flash (minimum 1Hz and maximum 3Hz), to help individuals with hearing impairments.	Has less detail than ADAAG, and allows a faster rate of flash (5Hz).
Water Fountains	Where there is more than 1 per floor, 50 percent should be accessible. If there is only 1, it must be accessible to wheelchair users and individuals who have difficulty bending.	Approximately 50 percent per floor must be accessible. If there is only one, it must be accessible.
Storage and Shelves	One of each type of storage facility must be accessible. Self-service shelves and services must be on an accessible route, but need not comply with reach range standards.	The same as ADAAG, but does not include an exemption from the reach range standards for self-service shelves and services.
Phones	All accessible phones must have volume controls; 25 percent but not less than 1 of all public phones must be accessible. One TDD must be provided inside any building that has 4 or more public pay phones (interior and/or exterior phones)	At least 1 accessible phone must have volume controls.
Detectable Warnings	Required at curb ramps, hazardous vehicular areas, and reflecting pools, but not on doors to hazardous areas.	Tactile warnings only on doors; must be a textured surface on the door handle or hardware.
Elevator Hoistway Floor Designations and Car Controls	Must have raised and braille characters.	Must have raised characters, no requirement for braille characters.

Transition Plans

The ADA required public institutions with 50 or more employees to develop transition plans by July 26, 1992. The plans had to identify all structural changes needed to remove barriers, how changes would be made, by when the changes would be completed, and the official responsible for implementing the plan. Schools had to give interested persons an opportunity to participate in developing the plan, and also have to make the document available for public inspection. They must complete all actions called for in the plan by Jan. 26, 1995.

Public institutions with fewer than 50 employees and private institutions don't have to develop transition plans. However, the ADA encourages them to do so, and all institutions would be smart to comply. The reasons are threefold:

1. Developing a plan is useful because it helps an institution comply with access requirements in an organized manner.

2. If a disabled person complains about a barrier, the institution can show the person its plan and when it will modify the barrier. This can help fend off formal complaints.

3. If an institution's efforts are challenged in court or investigated by a federal agency, the plan documents what has been done and what will be done. This provides useful evidence of good faith efforts to comply with the law.

The transition plan should establish the following four priorities for completing work:

1. Provide access to facilities from public sidewalks, parking and bus stops. Examples: installing an entrance ramp, widening entrances and providing accessible parking spaces.

2. Provide access to areas where services, programs and activities occur. Examples: adjusting administrative offices to provide access, rearranging cafeteria tables, providing signs in braille and raised letters, widening doors, and installing visual alarms.

3. Provide access to restroom facilities. Examples: removing obstructing walls, widening doors and toilet stalls, installing grab bars.

4. Do anything else needed to provide access to services, programs and activities.

The next chapter provides an overview of ADAAG requirements, and the following chapter discusses how to use these requirements in conducting an accessibility audit.

Chapter 8

Accessibility Guidelines

The Americans with Disabilities Accessibility Guidelines apply in diverse settings. For example, the standard for reach range applies when reaching for a book, retrieving a form or pushing an elevator button. Similarly, the turning radius required for wheelchairs applies at corners, approaches to doors and in restrooms.

The following information summarizes ADAAG's requirements. ADAAG itself includes exceptions, clarifications and drawings not included here. Thus, educators should get a full copy of ADAAG to help them identify needed physical changes. The resource list in Appendix B explains how to get a copy of ADAAG. Appendix C provides eight prototype checklists for evaluating access to various areas.

General Exterior Access

Parking and Passenger Loading Zones

- At least one space in any parking area should be accessible. There must be one accessible space for every 25 spaces. For every eight accessible spaces, one must be accessible by vans.
- Accessible parking spaces should be 96 inches wide for cars. For vans, they should be 96 inches wide and have a 96-inch access aisle.
- Accessible spaces should be located next to the shortest accessible route to a facility or exit from a garage.
- Passenger loading zones should provide a sidewalk five feet wide and 20 feet long adjacent to the vehicle pull-up space.
- If there are curbs between the sidewalk and the pull-up area, a curb ramp should be provided.
- Sidewalks and vehicle standing areas should be level, with slopes not exceeding 1:50 in any direction. This means the slope should not rise more than 1 inch in height for every 50 inches in length.

Entrances

- Fifty percent of entrances must be accessible, with some qualifications.
- An accessible entrance should be connected to accessible exterior and interior routes.
- The interior route should reach all accessible spaces in the facility. The exterior route should be connected to accessible parking, passenger drop-off zones and public transportation stops.
- A service entrance should not be the sole

accessible entrance (unless it's the only entrance in a facility such as a parking garage).

Access in Both Exterior and Interior Areas

Accessible Routes

- At least one accessible route, such as a walkway, hall, aisle, tunnel or skyway, should be available from public transit stops, passenger loading areas and parking areas. In addition, at least one accessible route should connect facilities, and at least one accessible route should connect interior accessible spaces.
- Any accessible route with a running slope of greater than 1:20 must comply with the ramp standard (see ramps below).
- The route should be 36 inches wide and have 80 inches of head clearance. If the head clearance is less, a warning must be provided for people with visual impairments.
- In general, doorways along accessible routes must be 32 inches wide. ADAAG provides different standards for a variety of doors.
- Ground and floor elevations between 1/4 inch and 1/2 inch should be beveled. They also should have a slope no greater than 1:12.
- Elevations that exceed 1/2 inch should have a ramp, curb ramp, elevator or wheelchair lift. If space limitations make a 1:12 slope impossible, a slope between 1:10 and 1:12 is sufficient if the maximum rise is 6 inches. A slope between 1:8 and 1:10 is enough if the maximum rise is 3 inches. Slopes steeper than 1:8 are barred.
- Carpets and any paddings or backings must be firmly attached, and the pile thickness cannot exceed 1/2 inch. Exposed carpeting edges should have trim that complies with the standard for ground and floor elevations.

Ramps

- Ramps should be 36 inches wide.
- Ramps should have the least possible slope, and the slope cannot exceed 1:12.
- The maximum rise along any sloping area should not exceed 30 inches.
- If a ramp rises more than 6 inches or is more than 72 inches wide, handrails should be provided on both sides. There should be a clear space of 1 1/2 inches between the handrail and any wall. Handrails should extend 12 inches beyond the ramp's end.
- Ramps should have level landings at the top, bottom and places such as where turns occur. The landings should be at least as wide as the ramps leading up to them. Each landing should be 60 inches long. If individuals use the landing to change direction, the landing should be 60 inches by 60 inches. If there's a doorway at the end of the ramp, additional requirements apply (see doors below). Ramps and landings with dropoffs should have barriers such as curbs, walls or railings to prevent people from falling off.

Additional requirements apply to curb ramps. They must:

- be designed so that water does not collect on them;
- contain detectable warnings to alert people with visual impairments that they're approaching or are on a ramp;
- be adjacent to areas that do not exceed a slope of 1:20;
- meet ADAAG requirements for floors and ground surfaces.

Doors

ADAAG establishes requirements for different types of doors that vary somewhat. However, many of the basic requirements are identical or similar:

- Doors must be at least 32 inches wide so wheelchairs can pass through.
- Areas approaching doors must provide enough room so that users of wheelchairs can approach and use the door. Automatic doors that open to the side require the least maneuvering room.
- All ground and floor surfaces near doors should be level and clear.

- Revolving doors or turnstiles should have an accessible door or gate next to them.
- If there is a series of two or more doors, there should be at least 48 inches between the doors.
- Thresholds in interior doorways should not be higher than 1/2 inch.
- Door hardware, such as handles, pulls, latches, locks and other opening mechanisms, should have a shape that's easy to grasp with one hand. Hardware should not require tight grasping or twisting to operate. Lever-type openers, push-type mechanisms and U-shaped handles are all very accessible.
- Sliding doors should have accessible operating devices on both sides. Any device should be no more than 48 inches from the floor.
- For interior hinged, sliding or folding doors, the force required to open them should not exceed 5 pounds of pressure. ADAAG has not established standards for exterior doors. In addition, it gives administrators the discretion to set the opening force for fire doors.

Space Allowances for Wheelchairs

- The narrowest areas, such as doorways, must be at least 32 areas wide.
- Any continuous stretch, such as a pathway, must be at least 36 inches wide.
- In any area where two wheelchairs must pass, the space allowance should be at least 60 inches.
- Any area where a wheelchair must make a 180-degree turn should be at least 60 inches in diameter.
- A stationary wheelchair requires floor space that is 30 inches by 48 inches.

Reach Ranges for Wheelchair Users

- If a clear space or object only allows for a frontal approach in a wheelchair, the necessary reach should not be more than 48 inches or less than 15 inches off the floor.
- If a floor space either allows for or requires a side approach in a wheelchair, the necessary reach should not be more than 54 inches or less than 9 inches off the floor.
- If there are any obstructions, the reach standards must be modified.

Signs

ADAAG has numerous requirements for signs. Some of these include:

- Signs using the international symbols of accessibility should be posted to indicate accessibility to wheelchair users, the availability of telecommunications devices for the deaf and access for individuals with hearing loss.
- Letters on signs should be raised.
- Signs should include braille characters.

General Interior Access

Stairs

Stairs that connect levels that are not reachable by accessible means such as elevators, ramps and chairlifts must meet the following requirements:

- risers and treads must be uniform;
- treads should be at least 11 inches wide, when measured from riser to riser;
- stairs should not have open risers;
- handrails must be installed;
- edges of steps must be rounded.

Fixed Seating and Tables

- In any area with fixed seating and tables, at least one seat and table must be accessible to people who use wheelchairs. In areas with numerous fixed seats and tables, 5 percent must be accessible to wheelchair users.
- The seating and tables accessible to wheelchair users should provide knee clearance that's 27 inches high, 30 inches wide and 19 inches deep.
- Tables accessible to wheelchair users should be between 28 and 34 inches high.

Assembly Areas

- An assembly area should have 1 wheelchair location if the seating capacity is 4 to 25; 2 if the seating capacity is 26 to 50; 4 if the seating capacity is 51 to 300; 6 if the seating capacity is 301 to 500; and 6 plus one additional space for every 100 seats over 500.
- For forward or rear access by two wheelchairs, the available space should be 60 inches by 66 inches. For side access by two wheelchairs, the available space should be 48 inches by 66 inches.
- Areas for wheelchair placement should adjoin an accessible route to an accessible exit, provide sight lines comparable to those in other areas, and provide one fixed seat for a companion next to each wheelchair space.
- If the seating capacity is more than 300, wheelchair spaces should be offered in more than one location.
- ADAAG has specific requirements for wheelchair access to performing areas such as stages, lockers and dressing rooms.
- Reserved seating must be provided within 50 feet of the stage for listening systems that transmit to fixed seats.
- Any assembly area with 50 or more fixed seats or an audio amplification system should have a permanent assistive listening system. Other areas should either have such systems or have sufficient outlets and wiring to accommodate portable devices.
- Assembly areas with assistive listening systems should provide receivers for 4 percent of the total number of seats, but in no case less than two seats.
- Signs should indicate that assistive listening devices are available.

Cafeterias

- In any cafeteria with fixed seating, at least 5 percent of the tables should be accessible. At least one table must be accessible.
- If the eating counter or bar is more than 34 inches high, it should have a 60-inch section cut out and lowered for accessibility by people in wheelchairs. Alternatively, accessible counters can be provided in the same area.
- Access aisles to fixed tables should be 36 inches wide.
- Food service lines should be at least 36 inches wide, but it's preferable for them to be 42 inches wide so someone can pass behind a wheelchair.
- If self-service is required, at least 50 percent of the area should comply with ADAAG reach range standards (see reach range above).

Libraries

- For fixed seating, tables and study carrels, a minimum of 5 percent, but not less than one, must be accessible to people in wheelchairs.
- At least one checkout lane, exit and security control gate should be accessible to people in wheelchairs.
- Spaces in front of card catalogs and magazine displays should be at least 36 inches wide, and reach ranges should not exceed 48 inches from the floor.
- Stack aisles should be 42 inches wide.

Protruding Objects

- Objects protruding from walls, such as telephones, cannot extend more than 4 inches from the wall in pathways if they're between 27 inches and 80 inches from the floor.
- Protruding objects that are less than 27 inches off the floor can extend as far into pathways as desired.
- Freestanding objects mounted on poles or pylons may extend out 12 inches into pathways if they're between 27 inches and 80 inches from the floor.
- In no case should any object decrease a pathway to less than 36 inches wide.

Public Telephones

- On any floor with public telephones, at

least one should be accessible to wheelchair users.

- Telephone cords should be at least 29 inches long.
- The placement of public telephones should meet the ADAAG space allowance and reach range requirements.
- All accessible telephones should have volume controls.
- If telephone books are provided, they should meet the ADAAG reach range requirements.
- If a facility has four or more public telephones either inside or outside, at least one interior phone should be a text telephone (TDD) for the deaf.
- Public telephones designed to accommodate portable text telephones should have a shelf to hold the phone that has 6 inches of clearance and an outlet to plug in the phone.

Storage Areas

Fixed storage space should:

- have enough clear floor space to accommodate a wheelchair (30 inches by 48 inches);
- meet the reach range requirements for an individual using a wheelchair (see reach range above);
- have hardware that's accessible.

Restrooms, Bathrooms and Drinking Fountains

ADAAG provides very specific guidelines for a range of restrooms, bathrooms and drinking fountains. The most important guidelines are outlined below.

Restroom Availability

In any facility that offers access to toilets five percent of all stalls should be accessible to wheelchair users. At least one stall in every restroom must be accessible.

Toilet Stalls

- Depending on the point of entrance and size of the room, clear floor space approaching the toilet should range from 48 inches to 60 inches.
- If the toilet stall is less than 60 inches deep, 9 inches must be allowed for toe clearance.
- Grab bars should be installed behind and beside the toilet. The bar behind the toilet should be 36 inches long.
- Toilets should be between 17 and 19 inches high.
- Flush controls can be either hand-operated or automatic. They should be mounted on the toilet's side no more than 44 inches above the floor.
- Doors and door hardware must meet ADAAG requirements (see doors above).

Urinals

- Urinals can be either stall-type or wall-mounted and should have elongated rims.
- Urinal rims should not be higher than 17 inches above the floor.
- There must be a clear floor space in front of the urinal of at least 30 inches by 48 inches.
- Flush controls can be either hand-operated or automatic. They should be mounted on the urinal's side no more than 44 inches above the floor.

Sinks and Mirrors

- The sink rim and counter surface should be 34 inches or less from the floor.
- The sink and counter should have a knee clearance that's 27 inches high, 30 inches wide, and 19 inches deep.
- There must be a clear floor space in front of the sink of at least 30 inches by 48 inches.
- Under sinks, pipes should either be configured or insulated so as to protect against contact. Also, there should be no sharp or abrasive edges under sinks.
- Faucets should be lever-operated, push-operated or electronically controlled.

- Bottom edges of mirrors should be no more than 40 inches above the floor.

Bathtubs

- The amount of floor space required in front of a bathtub varies with a room's dimensions.
- Bathtubs must have grab bars and a seat either in the tub or at its head.
- Bathtub faucets should be lever-operated or push-operated.
- Bathtub enclosures should not obstruct access to wheelchair controls or transfers from wheelchairs.
- Tracks should not be mounted on enclosure rims.

Showers

- Showers should have hoses at least 60 inches long and allow for hand-held controls.
- Showers should have grab bars. The gripping surface of grab bars should be between 1 1/4 and 1 1/2 inch. The space between the bar and the wall should be 1 1/2 inches. Bars should be mounted on a side wall and under the controls, between 33 inches and 36 inches above the floor. In a 36-inch by 36-inch stall, the side bar should be 18 inches long and the bar under the controls should extend the length of the wall. In a 30-inch by 60-inch stall, the bars should extend the full length of the walls.
- In a 36-inch by 36-inch stall, a seat should be mounted 17 inches to 19 inches above the floor and extend the full depth of the stall on the wall opposite the controls. In a 30-inch by 60-inch stall, the seat should fold up and be mounted on the wall adjacent to the controls.
- Shower stalls that are 36-by-36 should have curbs of 1/2 inch or less. Stalls that are 60-by-60 should not have curbs.
- Shower enclosures should not obstruct wheelchair controls or transfers from a wheelchair.

Drinking Fountains and Water Coolers

- At least one water fountain should be usable by individuals in wheelchairs and those who have difficulty bending and stooping. A single fountain can be accessible to both if it has both high and low spouts. Alternatively, accessibility can be achieved by placing a paper cup dispenser next to a standard water fountain.
- Spouts should be no more than 36 inches from the floor.
- Water flow from the spout must be at least 4 inches high (to allow for filling a cup).
- On an accessible drinking fountain, the spout should be positioned so that the water flow is within 3 inches of the bowl's front edge.

Warnings, Alarms, Rescue Assistance

Warnings

- Devices must be installed to warn individuals with visual impairments of imminent danger. The devices should be installed on walkways, at doors to hazardous areas, at stairs, at hazardous vehicular areas and at pools.
- The warning devices can take many forms, such as curbs, railings or continuous audio signals.

Alarms

- Visual alarms should be provided in general use areas such as restrooms, meeting rooms, hallways and lobbies. They also should be installed in sleeping rooms in dormitories.
- Visual alarms should be integrated with any audible alarm system.
- ADAAG establishes specific technical requirements for both visual and audible alarms.

Rescue Assistance

- Facilities should have areas of rescue assistance, although ADAAG provides many options for complying with this requirement. Such areas as stairway landings and balconies can be areas of rescue assis-

tance if they contain smoke barriers or fire walls and are adjacent to a point of exit.

- Each area of rescue assistance must have sufficient space for two wheelchairs.
- Each area should permit audible and visual communication with a facility exit.
- Each area should be clearly identified as an area of rescue assistance.

Elevators

ADAAG contains numerous requirements for passenger elevators. Freight elevators should not be used to provide accessibility, and thus do not have to meet the requirements. However, elevators that serve both passengers and freight must comply with the requirements.

Outside an Elevator

- Elevator call buttons should be 3/4 inch or larger in dimension and be located 42 inches from the floor. The buttons should have visual signals indicating when a call is registered and answered.
- Both visual and audible signals should be provided at elevator doors to indicate which one is answering a call. Visual signals should be at least 2 1/2 inches in dimension and be mounted at least 72 inches from the floor. Audible signals should sound once for up and twice for down. Alternatively, audio tapes can be installed that indicate whether the elevator is going up or down and what floor it's on.
- Elevator entrances should have both raised *and* braille floor designations on both jambs.

Inside an Elevator

- Elevator doors must remain fully open for at least 3 seconds.
- The minimum length of time between when an elevator indicates a car is about to open until the door closes cannot be less than 5 seconds. The length of time needed must be calculated using an ADAAG formula.
- Elevator doors should reopen automatically if they become blocked by a person or object. Reopening should occur without the doors touching the obstruction if it's between 5 and 29 inches off the floor. Doors should remain open for at least 20 seconds before closing again.
- Elevator operation should be automatic, and elevators should self-correct so they stop within 1/2 inch of the floor.
- An elevator's floor plan should provide space for a person using a wheelchair to enter, reach the controls, and exit. The minimum space required is 48 inches by 48 inches.
- All elevator control buttons should be at least 3/4 inch in dimension. Both braille and raised standard letters should be used to identify each button. The call button for the main floor should have a raised star at the left of the floor designation. All buttons should meet the ADAAG reach standards.
- Both visual and audible signals should indicate what floor the elevator has reached.
- ADAAG does not require two-way emergency communication between the elevator and another location. However, if a device is provided it should be no higher than 48 inches from the floor, have a 29-inch cord, have accessible hardware and not require voice communication.

Chapter 9

Accessibility Audits of Existing Facilities

The ADA requires educators to systematically examine the accessibility of their existing facilities. Obviously, much of the assessment will be devoted to finding and correcting barriers to access by wheelchair users. However, it also should go beyond that to find barriers that impede or block access by other disabled people as well.

The purpose of this chapter is to explain how to conduct an accessibility audit that complies with ADA requirements. An accessibility audit should answer basic questions such as:

- Is parking accessible?
- Can wheelchair users get to the building and enter it?
- Can disabled individuals find and use spaces in the building such as classrooms, administrative offices, labs, vocational facilities, cafeteria, library and restrooms?

The audit should evaluate facility accessibility not just by students, but also by staff members, job applicants, parents and members of the public. The underlying goal of the audit is to make the facility barrier-free so that disabled individuals can be independent and have the same opportunities as others.

How to Conduct an Audit

An accessibility audit requires numerous steps:

- defining the scope of what will be evaluated;
- selecting standards to use in judging facilities;
- developing a process for collecting information;
- determining who will perform which portions of the audit;
- summarizing the audit's results;
- interpreting the audit's results to determine their meaning;
- setting priorities and timetables for removing barriers;

What an Accessibility Audit Should Examine

- Reach ranges, or how far someone must reach to get something or do something
- Interior and exterior pathways, especially main paths
- Protruding objects
- Ground and floor surfaces
- Parking areas
- Curbs
- Stairs
- Ramps
- Elevators
- Doors
- Entrances
- Drinking fountains and water coolers
- Restroom facilities
- Storage, such as cabinets, lockers and shelves
- Handrails
- Controls and operating mechanisms
- Alarms
- Signs
- Public telephones
- Fixed seating and built-in tables
- Assembly areas
- Transient lodging, such as dormitories

- determining how to remove each barrier;
- finding or confirming resources needed to remove barriers;
- designating people to follow up on barrier removal.

The Audit's Scope

The audit should examine all interior and exterior space that the educational institution controls. It should look at classrooms, workshops and garages where students are taught, gyms, locker rooms, administrative offices, health offices, auditoriums, cafeterias, libraries, athletic fields and parking lots, among other areas.

The audit should examine all property controlled by the institution, whether the property is owned or leased.

The Standards

As indicated earlier, all institutions should comply with ADAAG's requirements. However, at least for now public institutions have the option of complying with the Uniform Federal Accessibility Guidelines (UFAS) instead. Educators should obtain copies of both documents and determine which guidelines they'll use for the audit.

When making alterations or constructing new buildings, public institutions cannot "mix" ADAAG and UFAS standards. However, it's unclear whether the standards can be mixed when making minor changes to increase accessibility.

Selecting Auditors

Selecting who will perform the audit is one of the most critical steps in ensuring its usefulness. The ADA gives educators wide discretion in selecting auditors and determining how the audit will be conducted.

Informal auditors can be selected from existing staff members and students. They can be given tape measures and checklists and set to work. A smarter approach is to pair a staff member responsible for facilities management with a person who has a working knowledge of ADAAG to conduct the audit.

The audit team also should include disabled individuals. They can help in the following areas:

- A person in a wheelchair knows better than anyone else how to maneuver within tight spaces and may be able to suggest alternatives to removal of barriers.
- People with hearing or visual impairments can help identify hazardous areas and possibly suggest solutions.
- People with limited gripping ability can help examine hardware.
- People with limited reaching ability can help examine storage areas.

For Audit Assistance

Educators who want assistance with accessibility audits often can get help by calling local disability organizations. Many members of these groups have a working knowledge of ADAAG.

In addition, educators can call one of 10 federally funded regional ADA Disability and Business Technical Assistance Center, any of which can be reached at 800-949-4232. Such centers provide information and resource materials and can refer the caller to individuals and groups to assist with an accessibility audit.

Collecting Information

Information should be collected in an organized and systematic fashion. Appendix C includes eight prototype checklists that educators can use to develop their own customized audit checklists.

Using Audit Results

An accessibility audit will provide reams of information. Because of its vast quantity, the data will be useless unless it can be summarized. Most importantly, the summary should identify features that do not comply with ADAAG. These noncompliant features should be identified by location, type of feature and total number of noncompliant features at the location.

The summary also should indicate whether there's a comparable accessible feature in the same vicinity as an inaccessible feature. If there is, it may not be necessary to immediately alter the inaccessible feature. This information is particularly helpful if resources for barrier removal are limited.

Interpreting the Results

Educators must consider numerous factors when interpreting the audit's results. The most important factors are denial of access; safety; dignity, choice and independence; and convenience.

Denial of Access. Physical barriers that deny access pose the greatest legal risks for educators. Such barriers must be removed or alternatives to their removal must be found. Disabled people must be able to enter the building; reach primary use areas such as classrooms, restrooms and auditoriums; and use telephones, water fountains and specialized areas such as biology labs.

Safety. Barriers that pose safety risks also must be carefully examined. These can include entrance ramps without railings, classrooms with uneven floors and chemistry labs with inadequate alarms.

Dignity, Choice and Independence. For disabled individuals, maintaining dignity and having choices and independence are fundamental civil rights. Use of ADAAG guarantees these civil rights. Thus, educators should consider whether barriers affect the dignity, choices or independence of disabled people. Situations that might violate these principles include those where the only accessible elevator is a freight elevator, a disabled person cannot use a toilet with the stall door completely shut, or a disabled person must depend on someone else to assist with a personal telephone call.

Convenience. These barriers do not block access, but they make it harder for disabled individuals to use the facility. For example, they can result in a disabled person's taking longer to get somewhere, requiring permission to do something differently from others or depending on someone else for assistance. Examples of convenience barriers would include having the accessible facility entrance at the side rather than the front and storing equipment in such a way that someone had to retrieve the equipment needed by a disabled person.

Setting Priorities

Setting priorities for barrier removal is not a simple process. Barriers that deny access as well as those that threaten safety should be removed first. Those that affect dignity, choice and independence should be removed second, and those that affect convenience should be removed last. However, many barriers will overlap among these categories.

To complicate matters further, the ADA does not spell out precisely how far public institutions must go in meeting the access needs of disabled people. Obviously, institutions must remove barriers that physically block access to a facility. Things get murkier, though, when dealing with barriers affecting dignity, choice, independence and convenience. If removing these barriers requires little effort or money, they should be removed. But if getting rid of them is difficult, institutions may at this point have more latitude.

Chapter 10

New Construction and Alterations

The ADA requires that new or altered facilities be accessible to disabled individuals. Some of the ADA's construction requirements are the same for public and private institutions, although others vary.

While the definition of a new facility is obvious, the definition of an alteration is not. The ADA defines alteration very broadly as a change that affects the usability of any part of a building by disabled individuals. This includes such things as:

- remodeling, renovating and historic restoration
- changes in structural parts or elements
- changes in the configuration of walls and full-height partitions

The following things are not alterations under the ADA unless they affect a building's usablity:

- normal maintenance
- reroofing
- painting or wallpapering
- asbestos removal
- changes to mechanical or electrical systems

This chapter will first explain the construction requirements affecting both public and private institutions before detailing their separate requirements.

Public and Private Institutions

Accessibility Obligations

Under the ADA, the accessibility obligations governing alterations and new construction are slightly different. Both, however, are very stiff:

- An alteration begun after Jan. 26, 1992, must "to the maximum extent feasible" be readily accessible to disabled individuals. Basically, this means that accessibility must be provided unless it's virtually impossible to achieve.
- New facilities must be built so they're readily accessible to disabled individuals

unless it's "structurally impractical" to provide access. It will be a rare case where terrain makes full compliance structurally impractical. Even if an institution cannot fully comply, though, it must comply as much as the terrain allows and all accessibility requirements not affected by terrain must be met.

Path of Travel

Any alteration that affects access to primary function areas such as classrooms, offices and the cafeteria must be done so as to ensure that the path of travel to the areas is accessible to disabled individuals. A clear path of travel also must be maintained to restrooms, telephones and drinking fountains that serve the altered areas.

Educational institutions must comply with the path of travel requirement unless the cost of doing so would exceed 20 percent of the alteration's overall cost. If schools don't comply because of the 20 percent cutoff, they still must do as much as they can to make the area accessible. The ADA establishes the following priorities for deciding which work to perform:

1. make the building entrance accessible;
2. create an accessible route to the altered primary function area;
3. make at least one restroom for each sex accessible or provide a unisex restroom;
4. make telephones accessible;
5. make drinking fountains accessible;
6. make other items such as parking, storage and alarms accessible.

Equivalent Access

When constructing or altering a building, educators may use an approach that deviates from a federal accessibility standard. If they do, they must be prepared to show that their approach provides access equivalent to that provided by the relevant ADAAG standard.

Certification and Codes

Under the ADA, states may ask the United States attorney general to certify that the state's building code meets or exceeds ADAAG. Before starting any construction, educators should determine whether their state has such a certification.

Any state or local building code that exceeds ADAAG is *not* preempted by the ADA. Thus, if the local code has a tougher requirement than ADAAG, educators must comply with the local code.

Public Institutions

When altering or building facilities, public institutions must comply with either ADAAG or UFAS. As explained earlier, though, it's generally smarter to comply with ADAAG.

Public institutions cannot "mix" the ADAAG and UFAS standards when altering or constructing buildings. For example, if an institution is making two alterations in one building, both must adhere to one set of standards or the other. Similarly, when constructing a multiple-floor building, an institution cannot comply with ADAAG on some floors and UFAS on others.

Any public building that has two stories or more must have elevators. In some cases, platform lifts can be used instead in new construction, and they always can be substituted for elevators in alterations. Disabled individuals must be able to enter, operate and exit an elevator or lift without assistance.

Private Institutions

When altering or building facilities, private institutions must comply with ADAAG.

The ADA provides one exemption affecting both alterations and new construction by private institutions. If the building has two stories or less or has less than 3,000 square feet per floor, there's no requirement to install an elevator.

Section 3

Employing Individuals with Disabilities

Introduction

Besides requiring schools to provide a wide range of services to disabled students, the ADA also bars discrimination against job applicants and employees with disabilities. Complying with the ban on employment discrimination requires schools to take numerous affirmative steps.

Here's an overview of the information you'll find in each chapter:

Chapter 11: ADA's Employment Requirements

Briefly describes who must comply with the ADA's employment requirements and what actions are required or banned.

Chapter 12: Reasonable Accommodation

Explains the ADA's requirement that employers reasonably accommodate the needs of job applicants and staff members with disabilities.

Chapter 13: Integrating Employees with Disabilities

Provides guidance on how to integrate disabled people into the workplace so they can be productive employees.

Chapter 14: Hiring Practices

Describes how the ADA affects every aspect of hiring, from announcing vacancies to performing reference checks. Checklists for evaluating employment practices are included at end of the chapter.

Chapter 15: Workplace Policies

Describes how the ADA affects employment policies on sick leave, medical benefits and other issues.

Chapter 16: Reasonable Accommodation Strategies

Explains why it's important for schools to create systems for managing information about reasonable accommodations and how to establish such systems.

Chapter 17: Enforcement

Describes employment complaint procedures under the ADA.

Chapter 11

ADA's Employment Requirements

The employment requirements of the Americans with Disabilities Act are forcing most institutions to revise their hiring and employment procedures from top to bottom.

The employment requirements apply to every aspect of the hiring and employment process: announcing jobs, taking applications, testing, requiring medical examinations, hiring, making assignments, providing training, promoting and offering leave or medical benefits, among others.

The principle underlying the ADA's employment mandate seems simple: Both public and private-sector employers must not discriminate against disabled people in their employment policies and procedures. But behind that apparent simplicity lies a minefield of requirements that can easily blow up on the unwary.

The ADA's employment provisions apply to the following employers:

- Public employers with 25 or more part-time and full-time employees. They must comply now.
- Private-sector employers with 25 or more full-time and part-time employees. They also must comply now.
- Public and private-sector employers with 15 to 24 employees. They must comply by July 26, 1994.
- Public and private employers with fewer than 15 workers don't have to consider disabled individuals for employment.

To qualify for protection under the ADA's employment provisions, a person must:

1. Meet the ADA's definition of "disability." As explained in the Overview at the beginning of this book, the ADA's definition of "disability" covers people who have a physical or mental impairment that substantially limits a major life activity; have a record of such impairment; or are regarded by others as having such an impairment.
2. Be qualified for the position he's applying for or holds.

The ADA defines "a qualified person with a disability" in an employment situation as a person who:

- satisfies the requisite skill, experience, education and other job-related requirements of the position; and
- with or without reasonable accommodation can perform the job's essential functions.

Both definitions — of an individual with a disability and a qualified individual with a disability — promote thinking about people with disabilities as individuals and disallow stereotypic assumptions about ability.

What "Qualified" Means

The ADA's definition of "a qualified person with a disability" has several implications for schools:

- Any teaching applicant, whether disabled or not, must meet certification requirements. For example, a reading teacher must be certified in reading and a Spanish teacher must be certified in Spanish.
- Schools may impose other requirements that are reasonable and related to the job. For example, they can require a certain number of years of teaching experience or experience in a certain area, such as coordinating a work-study program.

If hired, a disabled person may require reasonable accommodation to perform the job's essential functions.

The ADA places three obligations on educators involved in hiring:

1. To base all hiring decisions on an individual's abilities rather than on unfounded generalizations or stereotypes about disabled people.
2. To define the essential functions of a job before judging applicants.
3. To establish procedures for determining and judging reasonable accommodation needs.

The first obligation is self-explanatory, and the third will be discussed in the next chapter. Let's examine the second obligation in some detail.

Clarifying Job Functions

An educator with hiring authority cannot determine whether a disabled person is qualified to perform a job unless he first understands the job's essential functions.

The Equal Employment Opportunity Commission (EEOC), the federal agency that enforces the ADA's employment requirements, has described in regulations how educators should identify the reasons a job exists. They should consider:

- **The job's purpose.** Why does this job exist? This can get complicated because many jobs have more than one essential function.
- **The number of staff who can perform a function.** For any action, how many staff members can perform it? Many employees may be able to make photocopies, but only one may be able to direct the school band.
- **Special skills required.** Does performing the function require special skills or expertise? For example, installing and maintaining a computer lab requires special skills.

Educators then should use the following questions to determine whether or not a function is essential:

- **Employer's judgment.** In the employer's judgment, is this function essential?
- **Information about the job.** Does the job description, and any other documents that describe the job, indicate that this function is essential?
- **Percent of time performing this function.** Does a person in this job spend a lot of time performing this function?
- **Consequences if not done.** What would happen if a person in this job did not or could not perform this function?
- **Collective bargaining agreement.** Does a

collective bargaining agreement describe this function as part of the job?

- **Function is done by others in same job.** Did people who had this job in the past perform this function?
- **Function is done by others in similar jobs.** Do people in similar jobs now perform this function?

Prohibited Actions

These employment-related actions are prohibited by the ADA:

1. **Segregating or limiting opportunity.** Limiting, segregating or classifying a disabled employee in a way that has negative employment consequences. For example, a school cannot hire deaf teachers just to teach deaf students but must also consider them for jobs teaching hearing students.

2. **Participating in discriminatory contracts.** Participating in contractual or similar relationships that have negative consequences for disabled job applicants or employees. For example, a school cannot participate in a job fair at a site that is not accessible to wheelchair users.

3. **Discriminating based on association.** Denying an employment opportunity to a qualified individual because of that person's association or relationship with a disabled person. For example, schools cannot refuse to hire a person because he lives with someone who has AIDS.

4. **Refusing to make accommodations.** Refusing to accommodate the known physical or mental limitations of a disabled applicant or employee, unless doing so would pose an undue hardship. For example, schools cannot refuse to give a disabled employee a reserved parking space near the school entrance.

5. **Denying employment because of a need for accommodation.** Refusing to hire a disabled person solely because she needs an accommodation, unless providing the accommodation would be an undue hardship. For example, schools cannot refuse to hire a secretarial applicant who needs computer software that makes characters large.

6. **Discriminating through qualifications.** Using qualification standards, employment tests or other selection criteria that tend to screen out disabled individuals, unless they are job-related and necessary. For example, high schools cannot require that all applicants for social studies teaching jobs have experience coaching sports.

7. **Discriminating through testing.** Using tests that fail to accurately measure abilities. For example, schools cannot require a disabled person who has fine-motor coordination problems to take a paper and pencil test in a fixed amount of time.

8. **Discriminating through retaliation.** Taking a negative action against a person, whether he's disabled or not, because he opposed an improper employment process, filed a complaint or participated in an investigation aimed at enforcing the ADA. For example, schools cannot retaliate against a nondisabled teachers' union representative who helps a disabled teacher file an ADA complaint.

Chapter 12

Reasonable Accommodations

The ADA requires employers, including schools, to reasonably accommodate the needs of job applicants and staff members with disabilities. This obligation extends to all aspects of employment, including application procedures, interviewing, use of selection criteria, performance of essential functions and participation in employer-sponsored events both inside *and* outside the work setting, including social events.

Employers must provide accommodation to the *known* physical or mental limitations of a disabled applicant or employee. Generally, the disabled individual is responsible for indicating that he or she needs accommodation. In cases where a supervisor observes that a disabled employee is not performing as expected, the supervisor may raise the accommodation issue.

Examples of Reasonable Accommodation

A reasonable accommodation is any modification to a job, employment practice or work environment that permits a disabled individual to take advantage of an employment opportunity.

Many accommodations are simple modifications that require little effort or expense. They can involve putting a teacher's desk on concrete blocks so a wheelchair can fit underneath, arranging for a colleague to record grade information or allowing a deaf teacher to use a fax machine to communicate with parents.

Examples of reasonable accommodations include:

- **Making facilities accessible.** This can involve rearranging space to provide 36-inch pathways in a work area or installing a railing next to the blackboard so a teacher can hold on for stability when writing.
- **Restructuring or redistributing job functions.** This is needed if a disabled employee cannot perform a nonessential job function. For example, an elementary teacher in a wheelchair may not be able to take his turn supervising a snow-covered playground in the winter. Instead, another teacher can take his place and he can be assigned a duty such as helping in the library or ordering supplies.

- **Altering when or how a job function is performed.** In this case, the disabled employee is allowed to do something at a different time or in a different way. For example, a teacher who can't write on a blackboard may prepare a handout each day listing material she'd otherwise write on the board.
- **Offering part-time or modified work schedules.** In this case, a school may allow a disabled employee to work a consistent shift so he can easily catch accessible public transportation.
- **Obtaining or modifying equipment or devices.** For example, a school may buy a cart for papers and supplies that a disabled high school teacher can roll to her various classrooms.
- **Obtaining necessary assistance.** This can involve providing qualified readers for individuals with visual impairments or interpreters for those with hearing impairments.
- **Modifying examinations, training materials or policies.** This can involve informing staff that they should offer to help disabled individuals fill out applications or putting training materials in alternative formats such as audio tapes.
- **Reassigning an employee to a vacant position.** If a job becomes open that would be more appropriate for a particular disabled individual, school officials can reassign him.

Some of the more complicated accommodations will be discussed in greater detail later in this chapter.

Posting Requirement

All employers who are required to comply with the ADA's employment provisions must post notices describing those provisions and the employer's obligation to comply. The notices especially should explain the ADA's reasonable accommodation requirement. The notices must be available in alternative formats, such as in big print, via telephone, on audio tape or computer disk.

When Accommodation Is Not Required

There are three circumstances in which accommodation is not required:

- when providing it would be an undue hardship;
- when an individual is not disabled but has a relationship with a disabled person;
- when a disabled person refuses accommodation.

Undue Hardship

Schools do not have to provide accommodation when doing so would be an undue hardship. This is the most important of the three exceptions to the accommodation requirement.

An undue hardship is defined as an action involving significant difficulty or expense. It can be an action that would be unduly costly, disruptive, extensive or that would fundamentally alter the nature or operation of the school. Determining whether a particular accommodation would be an undue hardship must be done on a case-by-case basis.

The ADA lists several factors that should be considered when judging whether a particular accommodation is an undue hardship. These include:

- the nature and cost of the accommodation;
- the facility's general characteristics, including its financial resources, number of employees and the impact of the accommodation on the facility and its resources;
- if applicable, the resources of any parent organization, including its financial resources, the number of employees and the number, type and locations of facilities;
- if applicable, the type of operation of any parent organization, including the composition, structure and functions of the work force; the geographic separateness of the facility; and the administrative or financial relationship between the parent organization and the facility.

While these general guidelines are helpful, they obviously aren't very detailed. Thus, de-

ciding whether a particular accommodation constitutes an undue hardship is challenging. The key concept to remember is *reasonableness*. If the accommodation is reasonable, it should be provided.

However, what constitutes a reasonable accommodation can vary based on circumstances. Here are three examples:

- It might be reasonable for a large school district to provide each deaf teacher with a telecommunications device for the deaf (TDD). This same action might be unreasonable in a small district with more limited resources.
- It might be reasonable to modify the job duties of a disabled secretary who worked in a large administrative office with several other secretaries. However, it might not be reasonable to modify the job if she was the only secretary.
- It might be reasonable to provide an interpreter for deaf teachers at a districtwide staff meeting. However, it might not be reasonable to provide an interpreter at a high school departmental meeting.

Relationship With a Disabled Person

An educator cannot refuse to hire a nondisabled person who has a relationship or association with a disabled individual. However, the educator does not have to provide reasonable accommodation to the nondisabled person.

For example, an educator cannot refuse to hire the husband of a terminally ill woman. Once the man is hired, though, the educator does not have to give him a flexible work schedule so he can take his wife to regular medical appointments. If the man requests such an accommodation as a condition of accepting the job, the educator can reject the request without violating the ADA.

Refusing Accommodation

If a disabled person refuses an accommodation, a school obviously does not have to provide it. However, if the person rejects an accommodation that's needed to enable him to perform essential job functions, he is not considered qualified and the school can withdraw the job offer.

Identifying Reasonable Accommodation

The first step in identifying reasonable accommodation comes before the issue of accommodation actually arises. It involves analyzing each job to determine its essential functions. Chapter 11 described how to perform this analysis.

The job analysis may yield some surprises. For example, many people may believe that a secretary's job doesn't have any major physical demands. A job analysis, however, can reveal that the job requires considerable walking to various offices, lots of typing that strains wrists, a fair amount of strength to open and close file cabinets and other physical demands.

Before the ADA, it's unlikely that many people thought about such demands or considered them physical in nature. However, such demands obviously influence if, when and how an individual can do a job. They particularly influence whether a disabled person can perform a certain job.

Forms of Reasonable Accommodation

As explained earlier, reasonable accommodation can take many forms. Some of the more complex forms are explained here.

Rescheduling

Rescheduling teachers can pose a big challenge for educators, since doing so can affect other faculty and students. Of course, if hiring decisions are made before schedules are developed, it can be easier to accommodate a disabled instructor through special scheduling. In most educational settings, it will be easier to reschedule a non-instructional employee.

Below are examples of rescheduling accommodation that may or not may not be possible in a given environment. Educators with employment-related responsibilities are not required to provide any or all of these options. However, they also cannot dismiss or discount the options. As with any accommodation, rescheduling should be considered on a case-by-case basis that takes into account the needs of both the disabled individual and the employer.

If a particular rescheduling option would be an undue hardship, an educator does not have to provide it. Nonetheless, the following seven examples could work in many settings with simple adjustments and some planning. And even though a particular option may be an undue hardship in a specific situation, educators must be willing to consider other rescheduling options that might not be undue hardships.

Examples:

- **Limited time off.** An individual needs two hours off for physical therapy each week during school hours. Possible solution: Have the individual stay 30 minutes late four days a week to compensate for the therapy time.

- **Major time off.** An individual needs regular medical treatments that last several hours during the work week. Possible solution: Allow the individual to put in hours at home at night or to work on the weekend.

- **Extended time off.** An individual needs two weeks out of the office to learn how to use a new artificial limb. Possible solution: Provide unpaid leave, and try to schedule the leave for a period when the work load should be lighter.

- **Leave.** The air conditioning system is operating erratically, making it difficult for the individual to perform his job. Possible solution: Let the person work at home until the system is repaired.

- **Constant schedule.** An individual requires a rigid schedule for taking medication and eating. Possible solution: Allow the individual to work the same schedule instead of alternating schedules like his colleagues do.

- **Frequent breaks.** An individual needs to rest frequently during the day to prevent fatigue. Possible solution: Have the individual stay 30 minutes longer at the end of the work day to compensate for breaks taken that exceed those allowed other employees.

- **Late arrival to work.** An individual depends on public transportation to get to work, but it's difficult for her to use it safely during peak rush-hour periods. Possible solution: Let the person start work an hour later than other employees.

Restructuring

Restructuring can take two different forms under the ADA's employment requirements:

1. Distributing nonessential functions of several jobs in new ways. This might be appropriate if a disabled individual can't do some nonessential functions of his job, but can do other nonessential functions routinely done by colleagues. Nonessential job functions can include a variety of actions depending on circumstances, including copying and collating, taking inventory on high shelves, cleaning equipment, supervising students at lunch or in the library or escorting students on field trips.

Educators only have to consider redistributing *nonessential* job functions. They have no obligation to consider redistributing *essential* job functions. This distinction is critical and points to the importance of carefully determining which job functions are essential and which are nonessential.

2. Allowing the disabled individual to perform essential job functions in a different manner, with aids or at different times than others with similar jobs. Here are some examples:

   - **Change in method.** An individual who has difficulty recording information on printed forms may be given a computerized version of the forms so she can enter all the information from a keyboard.

   - **Orientation aid.** An individual who has trouble remembering sequences of tasks or procedures can be given a list to check off or pictures to refer to as he proceeds through a series of duties.

   - **Change in time.** An individual who has difficulty with fine motor coordination in the morning could be allowed to perform duties that require such coordination in the afternoon.

Tax Breaks for Private Employers

Small, private employers, including educational and training institutions, are eligible for two tax breaks designed to help them meet the ADA's accommodation requirements. Any private business with gross receipts of $1 million or less for the taxable year *or* 30 or fewer full-time employees is eligible.

Tax credit for small business (Section 44 of the Internal Revenue Code). In 1990, Congress established a special tax credit to help smaller employers make accommodations required by the ADA.

An eligible small business may take a tax credit of up to $5,000 per year for accommodations made to comply with the ADA. The credit is available for one-half the cost of "eligible access expenditures" of more than $250 but less than $10,250.

"Eligible access expenditures" include:

- removing physical, communication or transportation barriers to make the business accessible to disabled people;
- providing qualified interpreters or other methods to make communication possible for people with hearing disabilities;
- providing qualified readers, taped texts or other methods to make information accessible to people with visual disabilities;
- acquiring or modifying equipment or devices for disabled people.

To be eligible for the tax credit, changes made to remove barriers or to provide services, materials or equipment must meet technical standards of the Americans with Disabilities Accessibility Guidelines (ADAAG), where applicable.

Tax deduction for architectural and transportation barrier removal (Section 190 of the Internal Revenue Code). Any eligible small business may take a full tax deduction of up to $15,000 annually for expenses incurred in removing specified architectural or transportation barriers. Expenses covered include costs of removing barriers created by steps, narrow doors, inaccessible parking spaces, toilet facilities and vehicles.

Reassignment

The need to consider reassignment may arise when an employee becomes disabled, when an employee's disability becomes more severe, or when changes in equipment or technology prevent an employee from doing his job.

It might be appropriate to consider reassignment in any of the following circumstances:

- when an accommodation is not possible in an employee's current job;
- when an accommodation in the current job would cause an undue hardship; or
- when both the employee and employer agree that reassignment is more appropriate than accommodation in the employee's current job.

The following factors should be examined when reassignment is being considered:

1. The types of jobs for which the individual is qualified.
2. The frequency with which such jobs become vacant.
3. General policies on reassignment.
4. Any institutional policies regarding sick and injured employees.
5. Any limitations imposed by a collective bargaining agreement.

Conclusion

Depending on the particular circumstances, the accommodation process has at least four steps:

1. **Consider the particular job.** Identify the job's purpose and its essential functions.
2. **Identify barriers to performance of the job.** This requires discussion between

the hiring official or supervisor and the disabled individual.

3. **Identify potential accommodations and assess their effectiveness.** This also requires discussion between the hiring official and the disabled person. In identifying potential accommodations, the standard to apply is common sense.

4. **Select an accommodation.** It should serve the needs of both the disabled individual and the institution. In selecting an accommodation, the EEOC says employers should try to provide the accommodation that the individual prefers. However, if several accommodations are equally effective, the employer can choose one that is cheaper and easier to provide.

Chapter 13

Integrating Employees with Disabilities

If people with disabilities are to be effective employees, employers must take steps to integrate them into the work environment. A disabled individual expects the same things from the workplace as any other employee:

- An opportunity to show or tell what he can do.
- The same opportunities to be independent, to choose, to influence and to participate as everyone else.
- To have evaluations of ability based on facts, not assumptions.

This chapter offers some simple guidelines for integrating disabled employees into the workplace. The first group of guidelines applies to all disabled employees, while the second group is broken down by specific disability.

General Guidelines

Guidelines in this section should help educators integrate disabled people in general.

Orientation for New Employees

- Introduce the new employee to his colleagues, explain what he will be doing and emphasize his skills and strengths.
- Explain what others do.
- Show the new employee where things like restrooms, storage areas and lounges are located.
- Explain procedures.
- Be sure to allow sufficient time for the orientation. Everyone will benefit from it over either the short or long term.

Personalizing the Environment

- Discuss how procedures or routes might be altered to make them easier for the employee.
- Ask the employee how he would like his work station or classroom arranged.
- If necessary, assign support staff to help the individual work out a personalized approach to the workplace.

- Give the individual the same choices and rights to choose that other employees enjoy.

Personal Communication

- Keep disabled employees informed about what's going on. Let them know what's needed, when it's needed and how it affects them, even if doing so takes special effort.
- Provide information in a usable format and in a regular hard copy, and provide it in a timely manner.
- If an employee has a visual impairment or does not see you approaching, alert the person to your approach and identify yourself.
- If an employee has a hearing impairment and does not see you, place yourself within sight or tap the person on the shoulder.

Full Inclusion

- Don't assume that a disabled employee cannot or does not want to participate in a work project or social event.
- If you're unsure about how or if to include a disabled employee, take your direction from the employee. Do not make choices or decisions for the person.
- When you are about to change something, consider its impact on the disabled employee in terms of the person's participation, safety and independence. If appropriate, discuss the change with the employee and solicit his ideas about the best ways to implement it.

Specific Disabilities

Guidelines in this section should help educators integrate people with specific types of disabilities.

Mobility Impairments

Educators may encounter a variety of situations involving employees with mobility impairments.

Supervisors should consider the following issues either when a person with a mobility impairment joins the staff or if performance problems arise:

- Whether the person can get to work at the scheduled time.
- Whether the person can enter the building and get to his work station or classroom and other key locations easily and safely.
- Whether the person can efficiently and safely use equipment and services related to his job.
- Whether the person can function efficiently, effectively and safely at his work station.

To solve either potential or actual problems, supervisors should consider taking the following actions:

- Developing new schedules.
- Rearranging or reallocating physical space.
- Modifying existing equipment, such as slowing the speed at which elevator doors close or changing door handles to ones that operate with downward pressure.
- Buying new equipment or devices such as two-drawer, lateral filing cabinets to replace four-drawer, pull-out cabinets.

Providing information in alternative formats. For example, during staff meetings in the auditorium major points can be presented both orally and on slides.

Following are some scenarios and their possible explanations:

Observation: The employee is frequently late for work.

Possible reason: Public transportation may be unreliable, the employee may find it easier or safer to commute during non-rush hours on public transportation, or inclement weather may cause delays.

Observation: The employee takes longer than normal to do routine tasks.

Possible reason: Important equipment that the person needs to perform a task is located in various places rather than in one spot.

Observation: The employee takes longer breaks than others.

Possible reason: The restroom is a great distance from the person's classroom or work station.

Observation: When entering the building, the employee frequently falls down.

Possible reason: The door at the main entrance is heavy and difficult to control or steps are uneven.

Observation: The employee appears not to pay attention during staff meetings in the auditorium and frequently asks others for clarifications after the meetings end.

Possible reason: The employee has difficulty walking down the auditorium's sloping aisle, so she always sits in the last row where it's difficult to hear.

Observation: The employee always eats lunch alone at his desk.

Possible reason: The employee carries his lunch each day because he doesn't want to impose on others to help him with a cafeteria tray or with carrying his lunch to the teachers' lounge.

Observation: In meetings, the employee appears poorly organized and unprepared, and frequently asks others to share copies of documents they brought to the meeting.

Possible reason: The employee has difficulty carrying papers and maintaining his balance, so he tries to reduce the amount of material he carries to meetings.

Observation: The employee's communication with others is limited and is strictly related to work matters.

Possible reason: The employee has a speech impairment that makes it difficult to understand her, especially if communication is infrequent or unplanned.

Observation: The employee's desk is always piled high with paper.

Possible reason: The person keeps many papers on his desk because it's difficult for him to transfer them between the desk and filing cabinet.

Observation: During rush projects, the employee fails to offer help with unattractive tasks.

Possible reason: The employee has difficulty with fine motor tasks that must be done rapidly such as collating or stapling.

Visual Impairments

People with visual impairments vary considerably in their ability to function in the workplace. This variability can be related to the person's degree of vision loss, when he became visually impaired, the type of education and training he received after the vision loss started and the type of support systems he either has now or had in the past. All these factors can affect the types of accommodation the person may seek at work.

Often, people with visual impairments have no other disabilities and their cognitive, intellectual and other abilities are well developed. In the workplace, their biggest stumbling block is usually printed materials. If others are sensitive to this fact, many problems can be averted.

Some visually impaired people, particularly those who are blind, strongly believe they must conquer their work environment without assistance. Others will readily accept and appreciate assistance and accommodation. When supervising or working with a visually impaired person, the best approach is to let the person explain how others can help.

Supervisors should do the following when a visually impaired person joins the staff:

1. Orient the person to the workplace, with special attention to providing information on the locations of important places and people.

2. Determine whether the person will provide any of his own assistive devices. What other devices does he need? With requested devices, which are essential and which are desirable?

3. Determine how the individual prefers to receive and send information.

4. Determine whether and when the person needs reader services. When are such services essential and when are they desirable?

5. Ask the individual for suggestions about how to acquire needed technology or reader services.

6. Discuss the arrangement of physical space in the person's work area, the path to it and adjacent areas. Make any needed adjustments.

7. If the individual has a guide dog, determine what assistance may be needed in caring for the dog during the work day.

Following are some scenarios educators may experience with visually impaired employees and their possible explanations:

Observation: There's a lag time between when the visually impaired person gets information and when she can use it.

Possible reason: Supervisors may not be providing information early enough so the employee can convert it into a usable format.

Observation: In meetings or training sessions that are dependent on print material or visual communication such as videos, the employee contributes little.

Possible reason: The meeting or training materials have not been converted into a format the employee can use.

Observation: The employee seems to complain a lot.

Possible reason: The employee is frequently frustrated by his inability to participate because materials aren't provided in usable formats.

Observation: The employee seems to be socially isolated.

Possible reason: Sighted employees often do not think to include the disabled employee in informal, spontaneous conversations that arise in the workplace.

Here are some other areas where problems can develop:

- **Social issues.** Absurd as it may seem, some people assume that if a visually impaired person cannot see them, the person does not know they are there. People should treat visually impaired individuals just like they treat everyone else. The standard should be, "Would I ignore that person if he could see me?"

- **Guide dogs.** People frequently want to interact with dogs they meet. However, with guide dogs they must remember that the animal is working and that permission should be obtained from the owner before petting or interacting with it.

- **Personal communication.** If an educator has infrequent encounters with a visually impaired person, it's helpful to identify himself. If the educator is uncertain, he can just say hello and see if the disabled person greets him by name. If not, then self-identification is appropriate.

- **Social events.** In organizing employer-sponsored social events such as outings to exhibits, plays or museums, educators shouldn't assume that a visually impaired person isn't interested in going along. Nor should they assume that the person doesn't want a printed copy of the program. Such events are as much social as they are informational, so a visually impaired person can enjoy them as much as anyone. If the visually impaired person doesn't want to attend or doesn't want a program, that should be his choice.

Learning Disabilities

The term "learning disability" is not a synonym for mental retardation. It also does not apply exclusively to people who have difficulty reading. A person who is learning disabled has trouble receiving, processing or producing information. A learning disabled person may have difficulty:

- interpreting or responding to information that is seen or heard;

- performing actions that require motor ability, such as writing and speaking;

- interpreting or responding to touching;

- perceiving the passage of time;

- interpreting or responding to the social behavior of others.

Many people with learning disabilities have average or above-average intelligence. They frequently have developed coping strategies, and know the type of accommodations they'll need on the job.

Integrating learning-disabled people into the workplace can pose special challenges. Supervisors and colleagues must be patient in helping the employee. With time, practice and opportunities to communicate in certain ways or to follow certain procedures, learning-disabled people frequently can overcome their limitations.

Supervisors should do the following when a learning-disabled person joins the staff:

- Find out how the individual prefers to receive and give information.
- Determine whether the individual needs special organization aids or personal training to help him handle information, time and tasks involving sequences or different types of work.
- Determine whether the individual needs help dealing with space and directions in the work environment.
- Determine whether the individual needs assistance with interpreting or reacting to interpersonal situations.

Determine where and when the individual requires assistance from others.

Educators may observe the following situations when working with a person who has a learning disability:

Observation: The employee frequently makes errors in spelling and word usage, on forms that require responses in narrow spaces, or in following written directions.

Possible reason: The person has visual perception problems that make it difficult to interpret printed information that's closely spaced.

Observation: The employee takes much longer than normal to complete tasks.

Possible reason: The employee has to reorganize or code information in special ways so he can use it easily. This takes extra time.

Observation: The employee has difficulty with assignments involving multiple tasks that must be completed in a particular sequence.

Possible reason: The employee may need to be given assignments both orally and in a written form where the tasks are numbered.

Observation: The employee is frequently late or excessively early for meetings.

Possible reason: The employee may need a watch or help from others in managing time appropriately.

Observation: The employee has difficulty with cognitive tasks, such as associating new material with material previously received.

Possible reason: The person may work more efficiently if associations are marked on documents and/or expressed verbally.

Observation: The employee has inadequate social skills. For example, he may not be able to correctly interpret the nonverbal cues of others or to respond appropriately in a given situation.

Possible reason: The person may need specific directions from others during interactions. For example, a supervisor may need to say, "Do not interrupt me. I will let you know when I am finished and it is your turn to talk."

Hearing Impairments

People with hearing impairments may be totally deaf or may have a partial hearing loss in one or both ears. Their hearing loss may have occurred either before or after they were able to understand and use language. People with hearing impairments have personal preferences for how they communicate with others. Some prefer to lip read and speak, others use sign language, others either write or type their messages, and some use a variety of these methods.

Since communication is vital in the workplace and the hearing-impaired person knows how he communicates best, supervisors and colleagues should follow his wishes regarding communication methods. Even though individuals prefer certain forms of communication, most are flexible and will communicate through alternative methods when necessary.

When communicating with a hearing-impaired person, an educator should remember the following guidelines:

- To ensure that you have the attention of a person with a hearing loss, it may be necessary to give a visual signal or tap his shoulder.

- Do not filter or edit conversations of others. Recreate them as completely as possible, including the tone, innuendo and context.
- When interacting with deaf individuals who have limited language ability, use short declarative sentences.
- Speak slowly, but in a normal speech pattern.
- Show expression to emphasize a point, but do not exaggerate lip movements.
- Minimize or eliminate visual and auditory distractions. Don't chew gum or sip coffee while talking with a hearing-impaired person.
- Even if an interpreter is present, maintain eye contact with the hearing-impaired person.
- Be willing to repeat information if requested or if you think the person misunderstood what you said.
- If the hearing-impaired person does not understand a direction, try presenting it another way. Rephrase it, write it down, or demonstrate it with body movements or pictures.
- Be patient. Take the time needed to share information.

In every situation involving oral communication in the presence of a hearing impaired person, consider how you would like to be treated if you had a hearing impairment. That's the ultimate test for selecting the most appropriate behavior.

Educators may observe the following situations when working with an employee who has a hearing impairment:

Observation: The employee fails to fully understand the conditions of employment.

Possible reason: The employee may not have been given detailed job information in writing.

Observation: The employee is socially isolated.

Possible reason: Social isolation can be prevalent when individuals are surrounded by colleagues who have trouble communicating with them. The disabled person especially may miss out on casual conversations that typically occur during the course of a workday.

Perception Problems

Sometimes dealing with hearing-impaired people can lead to misleading perceptions. Consider the following examples:

Example 1: A deaf employee is asking her co-worker how to perform a new procedure. While listening to the response, she stops what she's doing so she can lip read. A supervisor who observes this may incorrectly perceive that the employee is not working, when in fact she *is* working.

Example 2: A man who lost his hearing before developing language skills is a very efficient and conscientious worker. He sometimes asks questions of co-workers by writing notes where prepositions, articles and tenses are missing or incorrect. His co-workers may incorrectly perceive that he has low intelligence because his written communication, although functional, is ungrammatical.

Example 3: Co-workers may think that a person with a hearing impairment is overly inquisitive or assertive because he frequently asks questions or demands things. The perception may actually be accurate, but it has to be placed in context. Without asking questions or making demands, a hearing-impaired person may not get information that others receive through overhearing a conversation or similar unobtrusive methods. People with hearing impairments also often miss out on a message's tone or context, forcing them to ask additional questions.

Observation: The employee does not meet performance expectations.

Possible reason: People frequently perform work while conversing. If a person reads lips, he must quit working to concentrate on the conversation.

Observation: The employee has a limited capacity to understand spoken or written English.

Possible reason: His hearing loss occurred before he developed language skills.

Mental Illness

Some people with mental illnesses are able to adjust how, when or where they work so that their illness is not a factor in the workplace. An example would be a person with a phobia who avoids situations that make the phobia arise. Other people control their illness through medication, therapy and support groups. Still others only experience problems under certain conditions in the workplace.

Educators may observe the following problems with a mentally ill employee:

- is anxious when given an assignment;
- is absent from work under certain circumstances, such as after an argument with a supervisor, when a deadline is approaching or when given a new office mate;
- does not complete work on time;
- never completes work;
- avoids interacting with other people;
- challenges other people's motives;
- cannot work independently;
- cannot work in a group;
- needs constant supervision;
- needs frequent feedback on performance.

To help orient a new employee with mental illnesses and avoid problems, the supervisor should discuss with the employee the following items:

- the job's time pressures;
- the job's responsibilities;
- the degree of ambiguity present in the job;
- the degree of change that may occur, either planned or unplanned;
- the consequences of inaction or inappropriate action;
- the nature and extent of direct interaction with co-workers and supervisors;
- conditions and sources of support and feedback;
- the individual's personal barriers to successful job performance; and
- how others can help the individual adjust to the workplace.

Mental Retardation

The last decade has seen a dramatic increase in the number of mentally retarded individuals in the workplace. This experience has proven that mentally retarded people can be productive, reliable workers who meet expected job performance standards. They may, however, require different forms of instruction and more supervision than their co-workers.

Educators may observe the following problems with mentally retarded employees:

- failing to appear at work on time;
- not knowing how many times to perform a task;
- when uncertain about how to perform a task, doing nothing or doing something inappropriate;
- being unable to do a familiar task in an unfamiliar context;
- having difficulty interpreting instructions that are not concrete, clear and specific;
- having a short attention span;
- being unable to independently judge the quality of their own performance.
- working more slowly than others.

Many of these problems can be overcome with training and appropriate supervision. In fact, when problems arise they may not be caused by the individual's mental functioning level as much as:

- a lack of training on all tasks associated with a job;
- a lack of an opportunity to practice so they can reach an acceptable performance level;
- a lack of a routine or a frame of reference such as a model or picture that can be followed;
- distractions or interruptions;
- a lack of feedback or inconsistent feedback;
- a lack of supervision and monitoring.

Appropriate training can be arranged by contracting or working with experts in "supported employment" who provide on-the-job training. They frequently provide a "job coach" and initial job supervision that can be gradually turned over to the employer.

When hiring a mentally retarded employee, educators can help smooth the pathway by:

- Determining what types of training the individual may require.
- Determining what types of guidance or assistance the individual needs on the job, such as verbal directions, occasional verbal prompts, frequent positive feedback, actual demonstrations, extensive practice or assignments broken into separate tasks.
- Considering whether the individual needs any guidance or assistance with matters outside actual job performance and whether it would be appropriate to provide the assistance. Examples of such assistance could include help with getting to and from work, using breaks and lunch time and grooming and personal hygiene.
- When assigning the individual a task, whenever possible demonstrating how to perform the task.
- If the assignment involves multiple tasks, allowing the person to demonstrate comprehension and to practice.
- When giving feedback or supervision, being clear, specific and timely.
- For each assignment, making sure it's clear who the individual should turn to for help. A supervisor might say: "If you have any questions about what to do today, ask George. He'll be working beside you."
- Encouraging others in the workplace to include the disabled person in their social interactions.

Conclusion

This chapter has highlighted the false assumptions that underlie many attitudes about disabled individuals. It also has suggested functional, practical methods for promoting the full integration of disabled employees into education and training settings.

Initially, overcoming assumptions and taking appropriate actions may require a special effort. Over time, though, educators should find that most required behaviors will come naturally and easily.

Chapter 14

Hiring Practices

The ADA's mandate to prevent discrimination against disabled people in employment affects every facet of hiring, from posting notices to testing to checking references.

This chapter will explain the hiring procedures required of employers who must comply with the ADA's employment provisions.

At the end of the chapter are checklists for use in evaluating employment practices.

Job Information

The ADA does not require that educators write job descriptions. A job description is merely one piece of evidence the EEOC would examine to determine a job's essential functions if a complaint was filed. Having a job description in advance of hiring could carry some weight, although an educator also could write a job description after hiring. In the latter case, the information would reflect the educator's present view of a job.

There is no right way to prepare job descriptions. It can be helpful to separate essential from nonessential job functions. Administrators also should describe the purpose and results of job functions, rather than focusing on *how* the functions are performed. For example, if a job requires the use of a computer, the essential functions are accessing, inputting and retrieving information from the machine. It is *not* essential that the person be able to read information on a computer screen.

Job Qualifications

Educators are allowed to establish qualification standards and selection criteria that may screen out individuals with disabilities. However, such standards and criteria must be *job-related* and *consistent with business necessity*. Any criterion used that excludes disabled people must be related to one or more essential job functions.

In addition, if a standard or selection criterion screens out individuals with disabilities, it must be a legitimate qualification for a specific job, not a general class of jobs. For example, a high school can require that applicants for a *particular* social studies job have experience coaching varsity sports. However, it cannot require that applicants for *all* social studies jobs be experienced coaches.

Qualifications for a job can take many forms, including length and type of education, work experience, licenses or certification, physical or mental ability, ability to work under pressure, interpersonal skills and length of time in the current job. When considering a disabled job applicant, an educator must judge the individual against *job-*

related qualifications that are consistent with business necessity.

Determining whether an individual fulfills job qualifications may involve testing or interviewing. In either case, disabled candidates may need accommodations so their performance can be accurately measured.

Job Notices and Recruiting

The ADA does not necessarily require that educators alter their basic procedures for announcing vacancies, taking applications or conducting recruiting activities. However, the ADA does expect educators to provide disabled people with *access* to job notices, applications and recruiters. Educators have discretion in deciding how to provide such access.

For example, information about vacancies can be posted, advertised in the newspaper and announced on the radio. All the announcements can indicate that job information is available over the telephone or by fax. Educators also may wish to work with local organizations and government agencies that promote job placements for qualified people with disabilities.

Getting applications to and from disabled individuals can require some flexibility. For example, schools may want to accept applications:

- by mail;
- by fax;
- in person, with assistance in filling out the application provided by the personnel office;
- over the telephone, with a personnel officer filling out the relevant forms.

Any application packet sent out should include information about any testing requirements and the job's demands. This information can help all applicants determine whether they're qualified for the position. It also can help alert a disabled person to accommodations that may be needed in completing the application, taking any tests and participating in interviews. The packet should indicate a willingness to provide reasonable accommodation if requested and provide a telephone number to call for further information.

As indicated earlier, recruitment activities should be held in accessible locations. Alternatively, they can be held in multiple locations, some of which are accessible. Public notices about recruiting activities should indicate which facilities are accessible.

Pre-Employment Inquiries

The ADA prohibits making inquiries about disability or conducting medical examinations before a job offer is made. These mandates directly affect what questions educators can ask on applications or medical questionnaires and during interviews, medical examinations and reference checks.

Permitted Questions

The ADA gives educators discretion when asking questions that are job-related and consistent with business necessity. The following are examples of questions that educators *can* ask on applications and during interviews:

- This job requires coordinating job placements for students and doing site visits. Can you do that?
- This job requires that employees work 15 hours of overtime a month during the fall. Can you do that?
- This job requires working varied schedules. Can you do that?
- This job involves taking information over the telephone and entering it into a computer. Can you do that?
- This job involves carrying and operating movie projectors. Can you do that?

Prohibited Questions

No questions can be asked on applications or during interviews that either directly or indirectly relate to a disability. Thus, no questions are allowed about the disability's nature, severity, cause or prognosis, or about how the disability affected the applicant's past attendance record. In addition, no questions should infer that the interviewer holds assumptions about limitations connected to disability.

The following are examples of questions that educators *cannot* ask on applications and during interviews. Any can be asked after an

employment offer has been made, if all candidates are asked the same questions.

- Do you have a disability or illness that I should know about?
- Have you ever filed a workers' compensation claim?
- What diseases have you had?
- Are you taking any prescribed drugs?
- Do you have any limitations that prevent you from performing certain kinds of work?
- How many days were you absent from work for illness last year?
- Have you ever had a mental illness?
- Do you have any disabilities or impairments that might affect your performance in the job for which you're applying? (However, if the person has a known disability that appears to interfere with or prevent performance of a job-related function, the person can be asked to describe or demonstrate how he would perform the function).
- You will obviously need accommodations to perform this job. What kinds of accommodations will you require?

Reference Checks

The above examples of permitted and prohibited questions also apply when conducting reference checks. Educators can ask only job-related questions that will help them determine whether a person can perform a job's essential functions, either with or without accommodations.

Medical Inquiries

Educators cannot require pre-employment medical examinations. Such examinations can be required only after a conditional offer of employment has been made. Even then, the educator cannot require a disabled applicant to take a medical examination unless all people offered similar jobs are also required to take the exam.

If a school decides not to offer the applicant the job because of disability-related information turned up by the medical exam, the information must be job-related and consistent with business necessity. If the medical reason for excluding the applicant cannot be overcome with reasonable accommodation, the job offer can be withdrawn.

Physical agility tests may be required before a job is offered if they relate to essential job functions. However, at the pre-offer stage an applicant cannot be required to take a medical examination to establish his ability to take an agility test.

All information about medical examinations, disabilities and requests for and provision of accommodations must be maintained as confidential files. Whether the information concerns job applicants or employees, it should be kept separate from other personnel records.

Testing

The ADA allows individuals to be tested at any point in the employment relationship. Thus, they can be tested when they apply, after a conditional job offer has been made or after they have been hired. Educators must provide reasonable accommodation when testing disabled individuals.

Some forms of accommodation that may be necessary when testing include:

- **Change in method.** Altering when or how a disabled individual takes a test. For example, a disabled person might be allowed to give answers orally or to write answers on plain paper instead of on a computerized answer sheet.
- **Adjusting time.** Offering a disabled person more time, a different time or a different location to take a test or demonstrate ability.
- **Accepting work samples.** Permitting a person to submit work samples instead of taking a test to demonstrate ability level.
- **Use of a computer.** Allowing a disabled person to use a personal computer to communicate with a tester when no interpreter is available.
- **Adjustment in furniture.** Arranging for a disabled person to sit in a chair with arms when taking a test rather than using a student desk.

- **Use of interpreters or readers.** Providing qualified readers or interpreters.
- **Other adjustments.** Modifying examinations, training materials, or policies in other ways to meet the needs of the disabled person.

Use these checklists to determine if your institution's employment practices are in compliance with the ADA.

Qualification Setting, Hiring, Promotion, Training

- ☐ In hiring, we focus on an individual's qualifications, skills and abilities.
- ☐ We use standards, criteria and procedures that offer a disabled individual equal opportunities.
- ☐ We are willing to modify qualification standards, employment tests or other selection criteria as long as doing so does not compromise employment standards.
- ☐ We use testing procedures that provide a valid picture of an individual's ability to perform a job or participate in a training program.
- ☐ We are willing to consider a qualified disabled individual for a job or training, even if the individual will require reasonable accommodation to do the job.
- ☐ We apply all policies and procedures associated with qualification determination, hiring, promotion and training consistently to all applicants, unless an alteration is needed to reasonably accommodate a disabled individual.
- ☐ We have informed all staff involved in hiring, promotion and training decisions about these procedures.
- ☐ When using a contractor for any activity related to hiring, promotion or training, we ensure that the contractor follows proper procedures.

Job Descriptions and Qualifications

- ☐ We have a record of the essential functions for all jobs.
- ☐ We judge the functions characterized as essential against the EEOC criteria regarding reasons for and evidence of essential functions.
- ☐ We describe jobs in terms of what is to be accomplished, not in terms of how it is to be performed.
- ☐ We ensure that information is accurate and complete and reflects work currently being done in the job or similar jobs.
- ☐ We evaluate an individual in terms of his or her ability to perform essential functions of the job.
- ☐ We have a procedure that will permit us to provide any needed accommodation in a timely manner.
- ☐ We ensure that anyone responsible for screening or evaluating applicants or employees is aware of and complies with ADA requirements, including those connected to medical examinations.
- ☐ Notices about ADA requirements are posted and otherwise made available in both print and non-print formats.

Recruitment, Advertising, Interviewing

- ☐ We have identified and use local agencies that help qualified disabled individuals find employment.
- ☐ We make information about jobs available in more than one format, such as on audio tape and over the telephone.
- ☐ We hold recruitment activities at accessible locations.
- ☐ We offer assistance in completing applications.
- ☐ On our applications we offer opportunities for individuals to ask for accommodations in completing the application, taking a test, being interviewed and performing job duties.
- ☐ On our applications and during interviews, we may ask questions about the individual's ability to perform job functions.
- ☐ Staff members who handle phone inquiries about jobs and testing are prepared to answer questions about procedures, directions and accessibility.
- ☐ Applications of disabled individuals are processed the same way as applications of others—unless the disabled person has requested a reasonable accommodation that would require deviating from standard procedures.
- ☐ When we use a contractor for recruiting, advertising, testing or interviewing, we ensure that the contractor follows appropriate procedures.

Medical Examinations and Inquiries

- ☐ Unless there's a job-related reason for them, we ask no questions related to disability and disease in job interviews.
- ☐ We may ask interview questions about medical issues that are related to the ability to perform job functions.
- ☐ All individuals in a particular job category are treated the same regarding the requirement that they take a medical examination.
- ☐ We require individuals to take medical examinations *only after* making them a conditional employment offer.
- ☐ We use information from medical examinations or inquiries to screen out a disabled person only if:
  - a. the information indicates the individual cannot perform job functions;
  - b. such inability to perform cannot be overcome with reasonable accommodation;
  - c. to ignore such information would be inconsistent with our business needs.
- ☐ Medical information is kept in separate, secure, confidential files.
- ☐ Medical information is released only to supervisors or first aid personnel when they need it to provide accommodation or emergency medical treatment.
- ☐ All human resource personnel, managers, supervisors and first aid, safety and medical personnel are fully aware of our procedures.
- ☐ We ensure that any contractor involved with medical examinations and inquiries complies with our procedures.

Interviewing

- ☐ There are no questions relating to disability in our applications and interviews.
- ☐ We post notices about the ADA's provisions.
- ☐ On job announcements and applications and during interviews we notify applicants of our obligation to provide reasonable accommodation.
- ☐ Our interviewers are aware of appropriate ways to interact with disabled applicants.
- ☐ Our interviewers have been trained to observe the pre-employment restrictions on questions related to disability.
- ☐ We conduct interviews in accessible locations.
- ☐ Before interviews we provide applicants with accessibility information about interview locations.
- ☐ We provide applicants with detailed information about job functions.
- ☐ When requested, we provide interpreters or other forms of accommodation during interviews.
- ☐ We ensure that interview questions focus on eliciting information about an applicant's ability to do the job.
- ☐ We ensure that interviewers prepare questions concerning the applicant's ability to perform job functions.
- ☐ We have a procedure for addressing requests for accommodation.
- ☐ We ensure that interviewers are willing to discuss with applicants how any job function may be performed in an alternative manner.
- ☐ We ask all applicants the same questions.
- ☐ We maintain information related to requests for accommodation and disability in a confidential manner.

Chapter 15

Workplace Policies

Just like with hiring procedures, the ADA affects a wide range of employment policies. The same two principles underlie both its hiring and employment requirements:

- Any policy that limits or denies employment opportunities to disabled people must be job-related and consistent with business necessity.
- Even if an exclusionary policy is job-related and consistent with business necessity, employers must consider reasonable accommodation to overcome any discrimination against disabled people.

This chapter will explain the employment policies required of those institutions that must comply with the ADA's employment provisions.

Alcohol and Drug Use

The ADA allows educators to:

- conduct drug tests;
- prohibit the use of alcohol and illegal drugs in the workplace;
- prohibit being under the influence of alcohol or illegal drugs in the workplace;
- expect conformance with the standards of the Drug-Free Workplace Act of 1988; and
- hold an employee who uses alcohol or illegal drugs to the same performance standards as other employees, even if any unsatisfactory performance is related to the alcohol or drug use.

Health and Safety

Employers can require that an individual not pose a direct threat to the health or safety of himself or others in the workplace. However, the standard must be applied equally to all applicants for a specific job or all employees in a specific position.

Any educator must meet very specific and stringent requirements under the ADA to establish that a direct threat exists. The educator must be able to:

1. demonstrate a significant risk of substantial harm, such as the loss of a limb;
2. identify the *specific* risk, as well as its duration, nature, severity, likelihood or imminence;
3. show that the risk is current, rather than speculative or remote;
4. show that the assessment of risk is based on objective criteria such as medi-

cal evidence regarding the particular individual.

Even if a genuine, significant risk of substantial harm exists, an educator must consider whether it can be eliminated or reduced below the level of a direct threat by reasonable accommodation.

The ADA does not override state and local laws designed to protect the health and safety of the public unless the laws conflict with ADA requirements. For example, a local law denying employment as a bus driver to anyone who uses hearing aids would be overridden by the ADA.

Production Standards

Educational institutions are not expected to alter production standards as a form of accommodation. Thus, disabled employees are expected to meet the same production standards as other employees. However, disabled employees are entitled to reasonable accommodations to help them meet production standards.

Training

Qualified disabled employees have the same right to employer-sponsored training opportunities as other qualified employees. In training sessions, the employer must provide any reasonable accommodation such as copies of training materials in braille, interpreters, readers or assistance in taking tests.

Educational institutions often hire a training organization to provide training. In such cases, the contract should clearly state which party is responsible for providing reasonable accommodations to disabled participants.

Sick Leave/Unpaid Leave

The ADA does not entitle disabled employees to more sick leave than other employees. However, institutions are free to offer additional unpaid leave to disabled employees.

The ADA does not consider pregnancy a disability. Thus, the law does not affect policies governing maternity leave.

Medical Benefits

The ADA requires that disabled employees be provided the same amount and type of medical insurance as other employees. Moreover, educators cannot refuse to hire a disabled person or discharge a disabled person because they fear the person will increase their insurance rates.

It's legal under the ADA to use an insurance plan that does not pay for medical services tied to *pre-existing* conditions for all employees. The plan also can limit the amount that it pays for certain types of medical procedures or treatments, as long as all plan beneficiaries face the same limits. For example, the plan can limit the amount it pays for psychotherapy, blood transfusions or physical therapy.

Chapter 16

Reasonable Accommodation Strategies

Educators may focus much of their ADA efforts on basic compliance. That's all well and good. However, they also should develop strategies for managing the reasonable accommodation obligation. Doing so will enhance long-term compliance, besides saving time and money.

As explained in Chapter 12, the ADA's reasonable accommodation requirement is far reaching. It can involve everything from rescheduling to providing materials in braille to supplying an interpreter. Some of the accommodations are relatively costly or complex, making good planning essential.

For example, the first time an educator considers a blind job applicant, he will spend a fair amount of time exploring accommodations the person may need during the application process and after being hired. During his research, the educator will likely learn:

- what types of accommodation are available;
- how much they cost;
- how they will affect other employees;
- who can provide them; and
- how long it will take to get them.

All this information is very valuable, and should be maintained in a form that allows its use with later blind applicants. Properly managing the information requires keeping it in a usable form and protecting the confidentially of individuals who were accommodated. These two objectives are not incompatible. Without violating the ADA's confidentiality requirements, the educator should be able to maintain information about tapped and untapped resources, environmental modifications that are easy and inexpensive, specialized or modified equipment and other relevant issues.

Obviously, some forms of accommodation will be more complicated than others. These complicated cases especially require an infor-

mation management system that permits effective decision making.

Managing Information Efficiently

Educators generally collect two types of information when researching accommodations: the sources of accommodations and technical information about specific accommodations.

Information about sources of accommodations can include:

- contacts for interpreter services;
- contacts for reader services;
- firms that perform complex equipment modifications;
- public agencies that provide technical assistance;
- community organizations that serve disabled individuals.

Technical information about specific accommodations also can take many forms. For example, equipment control panels can be modified in a variety of ways to meet the needs of disabled people:

1. If the person has one arm, functions that normally require two hands to operate can be consolidated.
2. If the person has no use of his arms, the panel can be modified so it can be operated by the head.
3. If the person has trouble gripping, either operating switches themselves or the pressure and dexterity required to operate them can be modified.
4. If the person has low vision, key panel switches can be enlarged and painted in clearly contrasting colors.
5. If the person is deaf, lights of different colors can be attached to control panel functions.

The wealth of information about accommodations can be handled most easily by computer. Computerizing the information makes it easy to access and update.

Maintaining a computerized file also clearly indicates a serious effort to comply with the ADA's employment requirements. That can be helpful if a complaint is ever filed. It's especially important for private employers to have such evidence of good faith, since they can be liable for substantial financial penalties if they lose an ADA suit.

System Responsibility

Ideally, one person should be responsible for developing and maintaining the accommodation management system. This person should:

- Maintain the computer system.
- Maintain any videos or print materials about accommodations.
- Serve as an internal mediator when differences occur about which accommodation to select.
- Serve as a "source of last resort" when the person responsible for accommodations has little time to make a decision.

Accommodation Management

Following are suggested components for an accommodation management system:

- **Description of accommodation.** This should include as many descriptors as possible to allow for easy retrieval, particularly by searchers who have only a general idea of what they're looking for.
- **Purpose/function.** A detailed description of the accommodation's purpose or function helps searchers distinguish among similar options.
- **Other accommodations needed along with this accommodation.** Sometimes a particular accommodation will only work or works best in conjunction with other accommodations. It's important to maintain such information and to ask questions about the need for related options when talking to consultants or vendors. The information should distinguish between accompanying accommodations that are

likely to be necessary and those that are optional.

- **Time from inquiry/decision to delivery.** Information about how long it takes between an inquiry or decision about an accommodation and its delivery is critical. In many cases, time information will influence the feasibility of selecting among various accommodations.

- **Cost.** Cost is important in all cases, but particularly in those where various options are available. Having detailed cost information will help educators make economically sound choices.

- **Special installation required.** Obviously, accommodations that don't require special installation are more attractive than similar ones which do. A special installation may require external or internal assistance and disrupt the work of others. Thus, special installation requirements can influence cost and time factors.

- **Training needed.** Some accommodations require nothing more than a little time for practice, while others require extensive training. If training is necessary for a particular accommodation, the file should indicate what kind of training is needed, who can provide it, how much it costs and how long it takes.

- **Maintenance required.** Heavy maintenance requirements can add significantly to the cost of accommodation, so information about any needed maintenance is important. In addition, the file should indicate whether maintenance should be performed by external or internal sources.

- **Can be used by staff without disabilities.** The cost of an accommodation that can be used by all staff members can be justified more readily than one designed only for a specific person.

- **Any effect on other staff.** Some accommodations will affect other employees, while others will not. The file should include information on staff impact to judge the effect on productivity. If a particular accommodation is disruptive or fundamentally alters how others do their jobs, the employer should consider such information before choosing it. Staff training or simple awareness can mitigate the impact of many accommodations. In any training, though, the ADA bars discussion about a particular individual's need for accommodation without that person's permission.

- **Internal comments on use.** When an accommodation is used, it's important to record the voluntary reactions of supervisors and the employee(s) using it. Managers should ask how the accommodation works in the work environment and whether it's durable, flexible, reliable and easy to use. Such information provides a direct assessment that can make educators less dependent on vendors' claims and promises. These queries do not appear to violate ADA confidentiality requirements, since the information would not be placed in a person's confidential file.

- **External sources to contact.** The file should include contact information for organizations that work with disabled people. These groups frequently can provide information about how well an accommodation worked in other settings.

- **Equipment vendors.** Complete information should be maintained on vendors that offer various equipment. Having this information in the system will help speed decision making. In addition, when two or more vendors sell a similar piece of equipment, the educator can either pick the best price or have information to use in negotiating a lower price.

- **Expertise needed for technical assistance or fabrication.** Information about consultants has the same value as vendor information. The system should include information about both internal and external sources of expertise.

Chapter 17

Enforcement

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing the ADA's employment requirements. It also investigates employment complaints alleging discrimination based on race, ethnic origin, religion or sex. Its procedures, established under Title VII of the Civil Rights Act of 1964, are the same for all complaints.

In cases involving private employers, employees must file their complaints with the EEOC and cannot go directly to court. Complaints must be filed within 180 days of the alleged discrimination. In cases involving public employers, it's still unclear whether employees must file their complaints with the EEOC or can go directly to court.

In general terms, once a complaint is filed the EEOC will investigate and attempt to resolve the issue informally. If that fails, the agency will issue a right to sue letter.

The employee then can file suit in federal court and can ask for a jury trial. In a suit against a private employer, the employee potentially can win:

- compensatory damages;
- punitive damages of up to $300,000 if the employee proves that the employer failed to show good faith in providing accommodation;
- back pay;
- attorney's fees;
- expert witness fees;
- job reinstatement; and
- restoration of benefits.

In a suit against a public employer, the employee potentially can win all of the above except for punitive damages.

As indicated in Chapter 6, the ADA and section 504 require public employers with 50 or more employees to establish grievance procedures. Section 504 allows, but does not require, institutions to give job applicants access to their grievance procedures. The ADA is silent on this issue.

It makes sense to allow job applicants to use the grievance system. With any luck, doing so will make it possible to resolve most complaints at the local level. Educators should remember, though, that complainants don't have to use local grievance procedures before filing complaints at the federal level.

Appendix A

Americans With Disabilities Act of 1990

Public Law 101-336
101st Congress

An Act

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

July 26, 1990
[S. 933]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Americans with Disabilities Act of 1990.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

42 USC 12101 note.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal use of drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Enforcement.
Sec. 204. Regulations.
Sec. 205. Effective date.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

Sec. 221. Definitions.
Sec. 222. Public entities operating fixed route systems.
Sec. 223. Paratransit as a complement to fixed route service.
Sec. 224. Public entity operating a demand responsive system.
Sec. 225. Temporary relief where lifts are unavailable.
Sec. 226. New facilities.
Sec. 227. Alterations of existing facilities.
Sec. 228. Public transportation programs and activities in existing facilities and one car per train rule.
Sec. 229. Regulations.
Sec. 230. Interim accessibility requirements.
Sec. 231. Effective date.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

Sec. 241. Definitions.
Sec. 242. Intercity and commuter rail actions considered discriminatory.
Sec. 243. Conformance of accessibility standards.

Sec. 244. Regulations.
Sec. 245. Interim accessibility requirements.
Sec. 246. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.
Sec. 302. Prohibition of discrimination by public accommodations.
Sec. 303. New construction and alterations in public accommodations and commercial facilities.
Sec. 304. Prohibition of discrimination in specified public transportation services provided by private entities.
Sec. 305. Study.
Sec. 306. Regulations.
Sec. 307. Exemptions for private clubs and religious organizations.
Sec. 308. Enforcement.
Sec. 309. Examinations and courses.
Sec. 310. Effective date.

TITLE IV—TELECOMMUNICATIONS

Sec. 401. Telecommunications relay services for hearing-impaired and speech-impaired individuals.
Sec. 402. Closed-captioning of public service announcements.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.
Sec. 502. State immunity.
Sec. 503. Prohibition against retaliation and coercion.
Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 505. Attorney's fees.
Sec. 506. Technical assistance
Sec. 507. Federal wilderness areas.
Sec. 508. Transvestites.
Sec. 509. Coverage of Congress and the agencies of the legislative branch.
Sec. 510. Illegal use of drugs.
Sec. 511. Definitions.
Sec. 512. Amendments to the Rehabilitation Act.
Sec. 513. Alternative means of dispute resolution.
Sec. 514. Severability.

42 USC 12101.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies,

failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS. 42 USC 12102

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

42 USC 12111

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) DIRECT THREAT.—The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(5) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(6) ILLEGAL USE OF DRUGS.—

(A) IN GENERAL.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) DRUGS.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

(7) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(8) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) FACTORS TO BE CONSIDERED.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

SEC. 102. DISCRIMINATION. 42 USC 12112

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compen-

sation, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) MEDICAL EXAMINATIONS AND INQUIRIES.—

(1) IN GENERAL.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) PREEMPLOYMENT.—

(A) PROHIBITED EXAMINATION OR INQUIRY.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) ACCEPTABLE INQUIRY.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) EMPLOYMENT ENTRANCE EXAMINATION.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) ACCEPTABLE EXAMINATIONS AND INQUIRIES.—A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) REQUIREMENT.—Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

SEC. 103. DEFENSES. 42 USC 12113.

(a) IN GENERAL.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity,

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and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) RELIGIOUS ENTITIES.—

(1) IN GENERAL.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) RELIGIOUS TENETS REQUIREMENT.—Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) LIST OF INFECTIOUS AND COMMUNICABLE DISEASES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, not later than 6 months after the date of enactment of this Act, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

Public information.

(D) widely disseminate such information regarding the list of diseases and their modes of transmissability to the general public.

Such list shall be updated annually.

(2) APPLICATIONS.—In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) CONSTRUCTION.—Nothing in this Act shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability published by the Secretary of Health and Human Services.

42 USC 12114.

SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) AUTHORITY OF COVERED ENTITY.—A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are

employed in such positions (as defined in the regulations of the Department of Transportation).

(d) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) TRANSPORTATION EMPLOYEES.—Nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c).

42 USC 12115.

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

42 USC 12116.

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

42 USC 12117.

SEC. 107. ENFORCEMENT.

(a) POWERS, REMEDIES, AND PROCEDURES.—The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4, 2000e–5, 2000e–6, 2000e–8, and 2000e–9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106, concerning employment.

(b) COORDINATION.—The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and

Regulations.

part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act.

SEC. 108. EFFECTIVE DATE. 42 USC 12111 note.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

SEC. 201. DEFINITION. 42 USC 12131.

As used in this title:

(1) PUBLIC ENTITY.—The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

SEC. 202. DISCRIMINATION. 42 USC 12132.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SEC. 203. ENFORCEMENT. 42 USC 12133.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

SEC. 204. REGULATIONS. 42 USC 12134.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.

(b) RELATIONSHIP TO OTHER REGULATIONS.—Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) STANDARDS.—Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act.

42 USC 12131 note

SEC. 205. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Section 204 shall become effective on the date of enactment of this Act.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

42 USC 12141

SEC. 221. DEFINITIONS.

As used in this part:

(1) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) DESIGNATED PUBLIC TRANSPORTATION.—The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 241)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) OPERATES.—The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) PUBLIC SCHOOL TRANSPORTATION.—The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

SEC. 222. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS. 42 USC 12142.

(a) PURCHASE AND LEASE OF NEW VEHICLES.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) PURCHASE AND LEASE OF USED VEHICLES.—Subject to subsection (c)(1), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) REMANUFACTURED VEHICLES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) EXCEPTION FOR HISTORIC VEHICLES.—

(A) GENERAL RULE.—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph

(1) and which do not significantly alter the historic character of such vehicle.

(B) VEHICLES OF HISTORIC CHARACTER DEFINED BY REGULATIONS.—For purposes of this paragraph and section 228(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

42 USC 12143

SEC. 223. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) ISSUANCE OF REGULATIONS.—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) REQUIRED CONTENTS OF REGULATIONS.—

(1) ELIGIBLE RECIPIENTS OF SERVICE.—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying

the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) SERVICE AREA.—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) SERVICE CRITERIA.—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) UNDUE FINANCIAL BURDEN LIMITATION.—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) ADDITIONAL SERVICES.—The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) PUBLIC PARTICIPATION.—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) PLANS.—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) PROVISION OF SERVICES BY OTHERS.—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) OTHER PROVISIONS.—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) REVIEW OF PLAN.—

(1) GENERAL RULE.—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) DISAPPROVAL.—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) MODIFICATION OF DISAPPROVED PLAN.—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) DISCRIMINATION DEFINED.—As used in subsection (a), the term "discrimination" includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

42 USC 12144

SEC. 224. PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable

by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SEC. 225. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE. 42 USC 12145

(a) GRANTING.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 222(a) or 224 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) DURATION AND NOTICE TO CONGRESS.—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) FRAUDULENT APPLICATION.—If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) was fraudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

SEC. 226. NEW FACILITIES. 42 USC 12146

For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 227. ALTERATIONS OF EXISTING FACILITIES. 42 USC 12147

(a) GENERAL RULE.—With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or

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access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) SPECIAL RULE FOR STATIONS.—

(1) GENERAL RULE.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) RAPID RAIL AND LIGHT RAIL KEY STATIONS.—

(A) ACCESSIBILITY.—Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on the effective date of this paragraph.

(B) EXTENSION FOR EXTRAORDINARILY EXPENSIVE STRUCTURAL CHANGES.—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least ⅔ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) PLANS AND MILESTONES.—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

42 USC 12148.

SEC. 228. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE.

(a) PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES.—

(1) IN GENERAL.—With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794), for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) or section 227(b) (relating to key stations).

(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) ONE CAR PER TRAIN RULE.—

(1) GENERAL RULE.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) HISTORIC TRAINS.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 222(c)(1) and which do not significantly alter the historic character of such vehicle.

SEC. 229. REGULATIONS. 42 USC 12149

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part (other than section 223).

(b) STANDARDS.—The regulations issued under this section and section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 230. INTERIM ACCESSIBILITY REQUIREMENTS. 42 USC 12150

If final regulations have not been issued pursuant to section 229, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of

such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 226 and 227, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

42 USC 12141 note

SEC. 231. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 shall become effective on the date of enactment of this Act.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

42 USC 12161

SEC. 241. DEFINITIONS.

As used in this part:

(1) COMMUTER AUTHORITY.—The term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8)).

(2) COMMUTER RAIL TRANSPORTATION.—The term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9)).

(3) INTERCITY RAIL TRANSPORTATION.—The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) RAIL PASSENGER CAR.—The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) RESPONSIBLE PERSON.—The term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) STATION.—The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SEC. 242. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY. 42 USC 12162.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) SPECIAL RULE FOR SINGLE-LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) SPECIAL RULE FOR SINGLE-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE-LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

(A) SINGLE-LEVEL DINING CARS.—On any train in which a single-level dining car is used to provide food service—

(i) if such single-level dining car was purchased after the date of enactment of this Act, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to

purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) ACCESSIBILITY.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) EXISTING STATIONS.—

(A) FAILURE TO MAKE READILY ACCESSIBLE.—

(i) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(ii) PERIOD FOR COMPLIANCE.—

(I) INTERCITY RAIL.—All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(II) COMMUTER RAIL.—Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years after the date of enactment of this Act in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) DESIGNATION OF KEY STATIONS.—Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) REQUIREMENT WHEN MAKING ALTERATIONS.—

(i) GENERAL RULE.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the

maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

42 USC 12163

SEC. 243. CONFORMANCE OF ACCESSIBILITY STANDARDS.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

42 USC 12164

SEC. 244. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part.

42 USC 12165

SEC. 245. INTERIM ACCESSIBILITY REQUIREMENTS.

(a) STATIONS.—If final regulations have not been issued pursuant to section 244, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is

issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 242(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to section 244, a person shall be considered to have complied with the requirements of section 242 (a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 246. EFFECTIVE DATE. 42 USC 12161 note.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 242 and 244 shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS. 42 USC 12181.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) COMMERCIAL FACILITIES.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) PRIVATE ENTITY.—The term "private entity" means any entity other than a public entity (as defined in section 201(1)).

(7) PUBLIC ACCOMMODATION.—The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) RAIL AND RAILROAD.—The terms "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(9) READILY ACHIEVABLE.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this Act;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the

impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) SPECIFIED PUBLIC TRANSPORTATION.—The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) VEHICLE.—The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under this title.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS. 42 USC 12182.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) CONSTRUCTION.—

(1) GENERAL PROHIBITION.—

(A) ACTIVITIES.—

(i) DENIAL OF PARTICIPATION.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) PARTICIPATION IN UNEQUAL BENEFIT.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) SEPARATE BENEFIT.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privi-

lege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) INDIVIDUAL OR CLASS OF INDIVIDUALS.—For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) INTEGRATED SETTINGS.—Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—For purposes of subsection (a), discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fun-

damentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) EQUIVALENT SERVICE.—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) DEMAND RESPONSIVE SYSTEM.—For purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily

accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) OVER-THE-ROAD BUSES.—

(i) LIMITATION ON APPLICABILITY.—Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) ACCESSIBILITY REQUIREMENTS.—For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) SPECIFIC CONSTRUCTION.—Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

42 USC 12183.

SEC. 303. NEW CONSTRUCTION AND ALTERATIONS IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to public accommodations and commercial facilities, discrimination for purposes of section 302(a) includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and

scope (as determined under criteria established by the Attorney General).

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN SPECIFIED PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES. 42 USC 12184

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) CONSTRUCTION.—For purposes of subsection (a), discrimination includes—

(1) the imposition or application by a entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) and with the requirements of section 303(a)(2);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following

the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) HISTORICAL OR ANTIQUATED CARS.—

(1) EXCEPTION.—To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) DEFINITION.—As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

42 USC 12185

SEC. 305. STUDY.

(a) PURPOSES.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) CONTENTS.—The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadlines specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year. President of U.S.

(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS. 42 USC 12186.

(a) TRANSPORTATION PROVISIONS.—

(1) GENERAL RULE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections

302(b)(2) (B) and (C) and to carry out section 304 (other than subsection (b)(4)).

(2) SPECIAL RULES FOR PROVIDING ACCESS TO OVER-THE-ROAD BUSES.—

(A) INTERIM REQUIREMENTS.—

(i) ISSUANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) EFFECTIVE PERIOD.—The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) FINAL REQUIREMENT.—

(i) REVIEW OF STUDY AND INTERIM REQUIREMENTS.—The Secretary shall review the study submitted under section 305 and the regulations issued pursuant to subparagraph (A).

(ii) ISSUANCE.—Not later than 1 year after the date of the submission of the study under section 305, the Secretary shall issue in an accessible format new regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) EFFECTIVE PERIOD.—Subject to section 305(d), the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 7 years after the date of the enactment of this Act; and

(II) with respect to other providers of transportation, 6 years after such date of enactment.

(C) LIMITATION ON REQUIRING INSTALLATION OF ACCESSIBLE RESTROOMS.—The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) STANDARDS.—The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 302(b)(2) and 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this title not

referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) CONSISTENCY WITH ATBCB GUIDELINES.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

(d) INTERIM ACCESSIBILITY STANDARDS.—

(1) FACILITIES.—If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) VEHICLES AND RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this title, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this title and are in effect at the time such design is substantially completed.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS. 42 USC 12187.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT. 42 USC 12188.

(a) IN GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) are the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of

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section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

(2) INJUNCTIVE RELIEF.—In the case of violations of sections 302(b)(2)(A)(iv) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—

(i) IN GENERAL.—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) ATTORNEY GENERAL CERTIFICATION.—On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) SINGLE VIOLATION.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) PUNITIVE DAMAGES.—For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 309. EXAMINATIONS AND COURSES. 42 USC 12189.

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SEC. 310. EFFECTIVE DATE. 42 USC 12181 note.

(a) GENERAL RULE.—Except as provided in subsections (b) and (c), this title shall become effective 18 months after the date of the enactment of this Act.

(b) CIVIL ACTIONS.—Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—

(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less; and

(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less.

(c) EXCEPTION.—Sections 302(a) for purposes of section 302(b)(2)(B) and (C) only, 304(a) for purposes of section 304(b)(3) only, 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act.

TITLE IV—TELECOMMUNICATIONS

SEC. 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

State and local governments. 47 USC 225

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) USE OF GENERAL AUTHORITY AND REMEDIES.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

"(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the

regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

"(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

"(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications

relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) CERTIFICATION.—

"(1) STATE DOCUMENTATION.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

"(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

"(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

"(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

"(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

"(g) COMPLAINT.—

"(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

SEC. 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Section 711 of the Communications Act of 1934 is amended to read as follows: 47 USC 611.

"SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

"Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

"(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

"(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION. 42 USC 12201.

(a) IN GENERAL.—Except as otherwise provided in this Act, nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) RELATIONSHIP TO OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I, in transportation covered by title II or III, or in places of public accommodation covered by title III.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms

of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

(d) ACCOMMODATIONS AND SERVICES.—Nothing in this Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

42 USC 12202

SEC. 502. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

42 USC 12203

SEC. 503. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III, respectively.

42 USC 12204

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

(a) ISSUANCE OF GUIDELINES.—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.

(b) CONTENTS OF GUIDELINES.—The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) QUALIFIED HISTORIC PROPERTIES.—

(1) IN GENERAL.—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for

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alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) SITES ELIGIBLE FOR LISTING IN NATIONAL REGISTER.—With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7 (1) and (2) of the Uniform Federal Accessibility Standards.

(3) OTHER SITES.—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1) (b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SEC. 505. ATTORNEY'S FEES. 42 USC 12205.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE. 42 USC 12206.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) RENDERING ASSISTANCE.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the

plan for assistance developed under subsection (a), for title I.

(B) TITLE II.—

(i) SUBTITLE A.—The Attorney General shall implement such plan for assistance for subtitle A of title II.

(ii) SUBTITLE B.—The Secretary of Transportation shall implement such plan for assistance for subtitle B of title II.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III, except for section 304, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) TECHNICAL ASSISTANCE MANUALS.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each Federal agency that has responsibility under subsection (c)(2) for implementing this Act may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this Act. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

42 USC 12207

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) STUDY.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) SUBMISSION OF REPORT.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

(c) SPECIFIC WILDERNESS ACCESS.—

(1) IN GENERAL.—Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) DEFINITION.—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

SEC. 508. TRANSVESTITES. 42 USC 12208.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH. 42 USC 12209.

(a) COVERAGE OF THE SENATE.—

(1) COMMITMENT TO RULE XLII.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows:

"No member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(2) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this Act, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(3) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent

practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) PROPOSED REMEDIES AND PROCEDURES.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(7) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraph (1), (3), (4), (5), (6)(B), and (6)(C) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or of law, the purposes of this Act shall, subject to paragraphs (2) and (3), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) APPROVAL.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Speaker of the House of Representatives. The remedies and procedures shall be effective upon the approval of the Speaker, after consultation with the House Office Building Commission.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this Act shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

SEC. 510. ILLEGAL USE OF DRUGS. 42 USC 12210

(a) IN GENERAL.—For purposes of this Act, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity act on the basis of such use.

(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

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except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) HEALTH AND OTHER SERVICES.—Notwithstanding subsection (a) and section 511(b)(3), an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) DEFINITION OF ILLEGAL USE OF DRUGS.—

(1) IN GENERAL.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) DRUGS.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

42 USC 12211. SEC. 511. DEFINITIONS.

(a) HOMOSEXUALITY AND BISEXUALITY.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act.

(b) CERTAIN CONDITIONS.—Under this Act, the term "disability" shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) DEFINITION OF HANDICAPPED INDIVIDUAL.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following subparagraph:

"(C)(i) For purposes of title V, the term 'individual with handicaps' does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

"(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who—

"(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

"(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

"(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

"(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

"(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(v) For purposes of sections 503 and 504 as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) DEFINITION OF ILLEGAL DRUGS.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended by adding at the end the following new paragraph:

"(22)(A) The term 'drug' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

"(B) The term 'illegal use of drugs' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

(c) CONFORMING AMENDMENTS.—Section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking "Subject to the second sentence of this subparagraph," and inserting "Subject to subparagraphs (C) and (D),"; and

(2) by striking the second sentence.

SEC. 513. ALTERNATIVE MEANS OF DISPUTE RESOLUTION. 42 USC 12212

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials,

and arbitration, is encouraged to resolve disputes arising under this Act.

42 USC 12213. SEC. 514. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

Approved July 26, 1990.

LEGISLATIVE HISTORY—S. 933 (H.R. 2273):

HOUSE REPORTS: No. 101-485, Pt. 1 (Comm. on Public Works and Transportation), Pt. 2 (Comm. on Education and Labor), Pt. 3 (Comm. on the Judiciary), and Pt. 4 (Comm. on Energy and Commerce) all accompanying H.R. 2273; and No. 101-558 and No. 101-569 both from (Comm. of Conference).

SENATE REPORTS: No. 101-116 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD:

Vol. 135 (1989): Sept. 7, considered and passed Senate.

Vol. 136 (1990): May 17, 22, H.R. 2273 considered and passed House; S. 933 passed in lieu.

July 11, Senate recommitted conference report.

July 12, House agreed to conference report.

July 13, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):

July 26, Presidential remarks and statement.

Appendix B

Resources

ADA Regulations

Citations in the *Federal Register* for the regulations for Titles I, II, III and ADAAG

Title I [Employment] 29 CFR Part 1630 [56 Fed. Reg. 35726 (7/26/91)].

Title II [State and Local Government Services] 28 CFR Part 35 [56 Fed. Reg. 35694 (7/26/91)].

Title III [Public Accommodations and Services Provided by Private Entities] 28 CFR Part 36 [56 Fed. Reg. 35544 (7/26/91)].

ADA Accessibility Guidelines — These guidelines are printed in two places: (1) as an appendix to the Title III regulations and (2) as regulations issued by the Architectural and Transportation Compliance Board. (See address and phone number under "Technical Assistance Agencies" on this page).

The Department of Justice cite is: 36 CFR Part 1191 [56 Fed. Reg. 35408 (7/26/91).

The Architectural and Transportation Compliance Board has subsequently issued some corrections and proposed regulations: corrected at 57 Fed. Reg. 38174 (8/12/91) and at 57 Fed. Reg. 1393 (1/14/92)]; proposed regulations at 36 CFR 1191 [56 Fed. Reg. 60612 (12/21/92)].

Citations in the Federal Code of Regulations for the regulations for Section 504

Issued by the U.S. Department of Education on May 9, 1980: 34 CFR 104.

Citations in the Federal Code of Regulations for the regulations for Part B of IDEA

Issued by the U.S. Department of Education on September 29, 1992: 34 CFR Parts 300 and 301 [57 Fed. Reg. 44794].

Enforcement Agencies

These agencies enforce requirements of laws affecting individuals with disabilities.

Equal Employment Opportunity Commission
1801 L Street NW
Washington, DC 20507

For questions and documents
(800) 669-3362 (voice)
(800) 800-3302 (TDD)

Documents and alternative formats
(202) 663-4264 (voice)
(202) 663-7110 (TDD)

Job Accommodation Network
(800) 526-7234 (voice and TDD)

Federal Communications Commission
(Enforces ADA Title IV provisions governing telecommunications/telephone use by disabled persons)

1919 M Street NW
Washington, DC 20554
(202) 634-1808 (voice)
(202) 632-6999 (TDD)

U.S. Department of Education

Office of Civil Rights
330 C Street SW, Suite 5000
Washington, DC 20202
(202) 205-5413 (voice)
(202) 205- 8449 (TDD)

U.S. Department of Justice

Civil Rights Division/Public Access Section
P.O. Box 66738
Washington, DC 20035-6738
(202) 514-0301 (voice)
(202) 514-0383 (TDD)

U.S. Department of Transportation
(Enforces Titles II and III governing transportation services. School buses are exempt from ADA transportation requirements)

400 Seventh Street SW
Washington, DC 20590
(202) 366-1656 (voice)
(202) 366-2979 (TDD)

Technical Assistance Agencies

These agencies provide information about products and strategies used in the work place, referrals to consultants and other technical assistance.

Architectural and Transportation Barriers Compliance Board
1331 F Street NW, Suite 1000
Washington, DC 20004-1111
(800) 872-2253 (voice and TDD)

President's Committee on Employment of People with Disabilities
(800) 232-9675 (voice and TDD)

Job Accommodation Network
(800) ADA-WORK

ADA Disability and Business Technical Assistance Centers

ADA information, assistance and copies of documents prepared by the Equal Employment Opportunity Commission and Department of Justice (in standard or large print, audio cassette, braille and computer disk) may be obtained from any of 10 Regional Disability and Business Technical Assistance Centers.

Toll-free number for reaching any of the centers: 1-800-949-4232 (voice/TDD)

Region I **(207) 874-6535 (voice/TDD)**

Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut

Region II **(609) 392-4004 (voice)**
(609) 392-7004 (TDD)

New York, New Jersey, Puerto Rico

Region III **(703) 525-3268 (voice/TDD)**

Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia

Region IV **(404) 888-0022 (voice)**
(404) 888-9098 (TDD)

Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida

Region V **(312) 413-7756 (voice/TDD)**

Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota

Region VI **(713) 520-0232 (voice)**
(713) 520-5136 (TDD)

Arkansas, Louisiana, Oklahoma, Texas, New Mexico

Region VII **(314) 882-3600 (voice/TDD)**

Iowa, Missouri, Nebraska, Kansas

Region VIII **(719) 444-0252 (voice/TDD)**

North Dakota, South Dakota, Montana, Wyoming, Colorado, Utah

Region IX **(510) 465-7884 (voice)**
(510) 465-3172 (TDD)

Arizona, Nevada, California, Hawaii, Pacific Basin

Region X **(206) 438-3168 (voice);**
(206) 438-3167 (TDD)

Idaho, Oregon, Washington, Alaska

State Technology Assistance Programs

The U.S. Department of Education, National Institute on Disability and Rehabilitation Research, funds many state technology assistance projects. These projects provide information and training on how to buy, borrow, use and repair assistive technology.

Alaska	(907) 274-0138
Arkansas	(501) 666-8868
Colorado	(303) 420-2942
Illinois	(217) 522-7985
Indiana	(317) 233-3394
Iowa	(319) 353-6386
Kentucky	(502) 564-4665
Maine	(207) 621-3195
Maryland	(301) 333-3098
Massachusetts	(617) 727-5106
Minnesota	(612) 297-1554
Mississippi	(601) 354-6891
Nebraska	(402) 471-0735
Nevada	(702) 885-4440
New Mexico	(505) 827-3522
New York	(518) 473-4129
North Carolina	(919) 850-2787
Oregon	(503) 378-3830
Tennessee	(615) 741-3807
Utah	(801) 750-1982
Vermont	(802) 241-2186
Virginia	(804) 367-0316
Wisconsin	(608) 267-6720

Rehabilitation Engineering Centers

The U.S. Department of Education, National Institute on Disability and Rehabilitation Research, funds numerous rehabilitation engineering centers. Each center specializes in a disability or an aspect of disability in which it provides research and training.

Access

Rehabilitation Engineering Center on Modifications to Worksites and Educational Settings
Cerebral Palsy Research Foundation of Kansas
2021 North Old Manor, Box 8217-0217
Wichita, KS 67208
(316) 688-1888

Back Pain

Rehabilitation Engineering Center in Low Back Pain
University of Vermont
Department of Orthopedics and Rehabilitation
1 South Prospect Street/REC
Burlington, VT 05404
(802) 656-4067

Hearing

Gallaudet University
National Center on Deafness
Kendall Green
800 Florida Avenue NE
Washington, DC 20002
(202) 651-5051 (voice)
(202) 651-5052 (TDD)

Rehabilitation Engineering Center on Technological Aids for Deaf and Hearing-Impaired Individuals
The Lexington Center, Inc.
Research and Training Division
30th Avenue and 75th Street
Jackson Heights, NY 11870
(718) 899-8800

Helen Keller National Center for Deaf-Blind Youths and Adults
111 Middle Neck Road
Sands Neck, NY 11050
(516) 944-8900

Sight

The Smith-Kettlewell Rehabilitation Engineering Center/Eye Research Foundation
2232 Webster Street
San Francisco, CA 94115
(415) 561-1658

Helen Keller National Center for Deaf-Blind Youths and Adults
111 Middle Neck Road
Sands Neck, NY 11050
(516) 944-8900

Speech

Rehabilitation Engineering Center on Augmentative Communication
University of Delaware
Department of Computer & Information Science
Newark, DE 19711
(302) 651-6830

Technology, Equipment

Rehabilitation Engineering Center for Technology Resources
Institute for Human Resource Development
78 Eastern Boulevard
Glastonbury, CT 06033
(203) 659-1166

Rehabilitation Engineering Center on Prosthetics and Orthotics
Northwestern University
Rehabilitation Institute of Chicago
845 East Superior Street, Room 1441
Chicago, IL 60611
(312) 908-8660

Rehabilitation Engineering Center in Functional Electrical Stimulation
Case Western Reserve University
School of Medicine
2119 Abington Road
Cleveland, OH 44106
(216) 459-3480

Rehabilitation Engineering Center on Improved Wheelchair and Seating Design
University of Virginia
Box 3368 University Station
Charlottesville, VA 22903
(804) 977-6730

Rehabilitation Engineering Center on Access to Computers and Electronic Equipment
University of Wisconsin
Trace Center
750 University Avenue
Madison, WI 58706
(608) 262-6966

Vocational Assessments and Special Needs

For more information about how to take ADA requirements into account in documenting special needs through an appropriate Vocational Assessment or functional Vocational Evaluation, contact:

National Information Center for Children and Youth with Handicaps (NICHCY)
P.O. Box 1492
Washington, DC 20013
(800) 999-5599; (703) 893-8614(TDD).

Appendix C

Checklists for Evaluating Access

Checklists for Evaluating Access

This section features eight checklists for determining whether facilities are in compliance with the ADA. They are organized by area as follows:

1. General Exterior Access
2. General Interior Access
3. Workshops and Special-Purpose Areas
4. Restroom and Bathroom Facilities
5. Libraries
6. Cafeterias
7. Assembly Areas
8. Elevators

The standards in these checklists are taken from ADAAG for use in conducting an accessibility audit. However, before making any modifications, educators should consult ADAAG directly for a full explanation of relevant requirements. General requirements for such items as width of doors and slope of ramps are consistent throughout the checklists but are included in each area along with items unique to a particular area.

The checklists include space for noting comments about needed improvements. This makes them useful working documents to guide educators as they seek to bring their facilities into compliance with the ADA.

1. General Exterior Access

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Drop-off area	▸Is connected to an accessible route ▸Has curb cuts ▸Is level (1:50 slope or less)		
	Parking lot **Parking spaces** **For cars** **For vans**	▸The number of accessible spaces per total spaces is: 1 1-25 2 26-50 3 51-75 4 76-100 ▸Each space is 8 feet wide ▸Is 1 for every 8 accessible spaces ▸Each space is 8 feet wide ▸Access aisle is 8 feet wide		
	Signs	▸International symbol for accessibility displayed		
	Curb cuts	▸Are 36 inches wide ▸Have 1:12 slope ▸Have detectable warning for visually impaired ▸Are connected to an accessible route		
	Route	▸Is level or has ramp (for elevation over 1/2 inch) ▸Is connected to accessible drop off, public transit stop, parking and entrance		
	Entrance	▸Is connected to an accessible route ▸Door and door hardware are accessible ▸Signs are clear		

General Exterior Access (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Ramps	▸Are 36 inches wide ▸Have landings at appropriate intervals ▸Slope 1:12 ▸Have handrails where required ▸Handrails meet required dimensions ▸Have appropriate surface		
	Stairs	▸Have uniform risers and tread ▸Have 11-inch risers ▸Have rounded step edges ▸Have handrails ▸Have no open risers		
	Door	▸Doorway is at least 32 inches wide ▸Has accessible hardware ▸Threshold does not exceed 1/2 inch ▸Has 18 inches of clear wall space adjacent to door handle		
	Signs	▸If entrance accessible, so indicates ▸If entrance inaccessible, indicates nearest accessible entrance		

2. General Interior Access

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Space allowance	▸Doorways are 32 inches wide ▸Pathways are 36 inches wide ▸Areas where two wheelchairs pass are 60 inches wide ▸The area for a 180-degree turn of a wheelchair is 60 inches in diameter ▸Clear floor or ground space for a stationary wheelchair is 30 inches by 48 inches		
	Fixed storage	▸Has clear floor space to accommodate a wheelchair (30 inches by 48 inches) ▸Meets the reach range requirements for an individual using a wheelchair ▸Hardware is accessible		
	Accessible route	▸At least one accessible route connects accessible spaces ▸Meets the standard for space allowances ▸Provides a minimum of 80 inches of head clearance ▸If head clearance is less than 80 inches, a warning for the visually impaired is provided ▸Does not include stairs, steps or escalators ▸Doorways along the route are 32 inches wide ▸Serves as a means of exit in emergencies or connects to an area of rescue assistance		

General Interior Access (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Ground and floor surfaces	▸Elevations between ¼ inch and ½ inch are beveled, with a slope no greater than 1:12 ▸Elevations that exceed ½ inch are accompanied by a ramp, curb ramp, elevator or wheelchair lift ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:10 and 1:12 if the maximum rise is 6 inches ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:8 and 1:10 if the maximum rise is 3 inches ▸Slopes steeper than 1:8 are prohibited		
	Carpeting	▸Firmly attached ▸Has secured or no padding or backing ▸Has maximum pile thickness of ½ inch ▸Exposed edges of carpeting are fastened to the floor ▸Trim along any exposed edge complies with the standard for ground and floor elevations		
	Stairs	▸Have uniform risers and treads ▸Have 11-inch risers ▸Have rounded step edges ▸Have handrails ▸Have no open risers		

General Interior Access (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Areas of rescue assistance	▸Areas of rescue assistance include stairway landings, elevator lobbies, and balconies ▸Contain smoke barriers or fire walls ▸Are adjacent to exits ▸Have sufficient space for two wheelchairs (each space 30 inches by 48 inches) ▸Permit auditory and visual communication with an exit ▸Are clearly identified as an area of rescue assistance ▸A stairway used for rescue assistance has 48 inches between handrails		
	Protruding objects	▸Objects protruding from walls between 27 inches and 80 inches from the floor do not extend more than 4 inches from the wall along any route, pathway or aisle ▸Objects under 27 inches from the floor may extend any distance ▸Free-standing objects mounted on poles or pylons may extend out 12 inches between 27 and 80 inches from the floor ▸No object decreases a pathway to less than 36 inches		
	Doors	▸Doorways are at least 32 inches wide ▸Have accessible hardware ▸Thresholds do not exceed ½ inch ▸Have 18 inches of clear wall space adjacent to door handle		

General Interior Access (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Reach range	▸Applies to needs of wheelchair users ▸In a frontal approach, the required reach is not less than 15 inches nor more than 48 inches above the floor ▸In a side approach, the required reach is not less than 9 inches nor more than 54 inches above the floor ▸Obstructions require an adjustment in ranges		
	Counters, seats, tables, desks, work benches	▸Are 28 to 34 inches high ▸Have knee clearance 27 inches high, 30 inches wide, and 19 inches deep ▸Aisles are 36 inches wide		
	Signs	▸Width-to-height ratio for characters is between 3:5 and 1:1 ▸Stroke width-to-height ratio is between 1:5 and 1:10 ▸Sign characters are between 5/8 inch and 2 inches high and are raised 1/32 of an inch ▸Grade 2 braille characters are used ▸Pictorial symbol signs have equivalent verbal description placed directly beneath picture ▸Picture signs have 6-inch borders ▸Finish is eggshell, matte, or other non-glare finish ▸Contrast is light on dark or dark on light ▸Permanent identification signs are mounted 60 inches above the floor, either on the wall adjacent to the latch side of the door or on the nearest adjacent wall		

General Interior Access (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Detectable warnings	▸Are at doors to hazardous areas and at stairs to warn individuals with visual impairments		
	Alarms	▸Visual alarms are installed in general use areas such as hallways and lobbies ▸Visual alarms are integrated with the auditory alarm system		
	Water fountains and water coolers	▸Spouts are no more than 36 inches from the floor ▸Water flow from the spout is at least 4 inches in height (to allow for filling of a cup) ▸Spout is at the front of the unit, allowing water to flow parallel to the front of the unit ▸On an accessible drinking fountain, the spout is positioned so that water flow is within 3 inches of the front edge of the bowl ▸At least one water fountain is usable by individuals in wheelchairs or who have difficulty bending and stooping ▸At least 50 percent of water coolers are accessible		

General Interior Access (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Public telephones	▸Meet the space allowance, reach range, and knee clearance standards ▸On any floor with one or more public phones, at least one is accessible to wheelchair users ▸If there is one bank of public telephones, one telephone is accessible ▸If there are two or more banks of telephones, one per bank is accessible ▸Accessible phones have volume controls ▸If a facility has four or more public phones (counting interior and exterior sites), at least one interior phone is a text telephone (TDD) for the deaf ▸Telephone cords are at least 29 inches long ▸The international sign for accessible phones is displayed ▸Any telephone books provided meet the reach range standard ▸Public telephones designed to accommodate portable text telephones have a shelf to hold such phones (with 6 inches of clearance) and an outlet in which to plug the portable phone		

3. Workshops and Special-Purpose Areas

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Space allowance	▸The area for a 180-degree turn of a wheelchair is 60 inches in diameter ▸Clear floor or ground space for a stationary wheelchair is 30 inches by 48 inches		
	Accessible route	▸At least one accessible route connects accessible spaces ▸Meets the standard for space allowances ▸Provides a minimum of 80 inches of head clearance ▸If head clearance is less than 80 inches, a warning for the visually impaired is provided ▸Does not include stairs, steps or escalators ▸Doorways along the route are 32 inches wide ▸Accessible routes with running slopes greater than 1:20 comply with the ramp standard		
	Ground and floor surfaces	▸Elevations between ¼ inch and ½ inch are beveled, with a slope no greater than 1:12 ▸Elevations that exceed ½ inch are accompanied by a ramp, curb ramp, elevator or wheelchair lift ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:10 and 1:12 if the maximum rise is 6 inches ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:8 and 1:10 if the maximum rise is 3 inches ▸Slopes steeper than 1:8 are prohibited		

Workshops and Special-Purpose Areas (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Carpeting, mats	▸Firmly attached ▸Has secured or no padding or backing ▸Has maximum pile thickness of ½ inch ▸Exposed edges of carpeting are fastened to the floor ▸Trim along any exposed edge complies with the standard for ground and floor elevations		
	Protruding objects	▸Objects protruding from walls between 27 inches and 80 inches from the floor do not extend more than 4 inches from the wall along any route, pathway or aisle ▸Objects under 27 inches from the floor may extend any distance ▸Free-standing objects mounted on poles or pylons may extend out 12 inches between 27 and 80 inches from the floor ▸No object decreases a pathway to less than 36 inches		
	Reach range	▸Applies to needs of wheelchair users ▸In a frontal approach, the required reach is not less than 15 inches nor more than 48 inches above the floor ▸In a side approach, the required reach is not less than 9 inches nor more than 54 inches above the floor ▸Obstructions require an adjustment in ranges		

Workshops and Special-Purpose Areas (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Fixed storage	▸Has clear floor space to accommodate a wheelchair (30 inches by 48 inches) ▸Meets the reach range requirements for an individual using a wheelchair ▸Hardware is accessible		
	Counters, seats, tables, desks, work benches	▸Are 28 to 34 inches high ▸Have knee clearance 27 inches high, 30 inches wide and 19 inches deep ▸Aisles are 36 inches wide		
	Detectable warnings	▸Are used at doors to hazardous areas and at stairs to warn individuals with visual impairments		
	Alarms	▸Visual alarms are installed in general use areas such as hallways and lobbies ▸Visual alarms are integrated with the auditory alarm system		

4. Restroom and Bathroom Facilities

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Space allowance	▸Doorways are 32 inches wide ▸Pathways are 36 inches wide ▸Has a 60-inch diameter space so a wheelchair can turn 180 degrees ▸Has clear floor or ground space for a stationary wheelchair that is 30 inches by 48 inches ▸Recommended general space for wheelchairs is 60 inches by 60 inches		
	Accessible route	▸Accessible restroom is on an accessible route		
	Ground and floor surfaces	▸Elevations between ¼ inch and ½ inch are beveled, with a slope no greater than 1:12 ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:10 and 1:12 if the maximum rise is 6 inches ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:8 and 1:10 if the maximum rise is 3 inches ▸Slopes steeper than 1:8 are prohibited		
	Carpeting, mats	▸Firmly attached ▸Has secured or no padding or backing ▸Has maximum pile thickness of ½ inch ▸Exposed edges of carpeting are fastened to the floor ▸Trim along any exposed edge complies with the standard for ground and floor elevations		

Restroom and Bathroom Facilities (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Protruding objects	▸Objects protruding from walls between 27 inches and 80 inches from the floor do not extend more than 4 inches from the wall along any route, pathway or aisle ▸Objects under 27 inches from the floor may extend any distance ▸Free-standing objects mounted on poles or pylons may extend out 12 inches between 27 and 80 inches from the floor ▸No object decreases a pathway to less than 36 inches		
	Reach range	▸Applies to needs of wheelchair users ▸In a frontal approach, the required reach is not less than 15 inches nor more than 48 inches above the floor ▸In a side approach, the required reach is not less than 9 inches nor more than 54 inches above the floor ▸Obstructions require an adjustment in ranges		
	Urinals	▸Can be stall-type or wall-mounted, with elongated rim ▸Rim is not higher than 17 inches above the floor ▸Clear floor space in front of the urinal is at least 30 by 48 inches ▸Flush controls are hand operated or automatic, mounted on the side of the urinal no more than 44 inches above the floor		

Restroom and Bathroom Facilities (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Water closets, toilet stalls	▸Has clear floor space, approaching the toilet, ranging from 48 to 60 inches ▸Grab bars are installed on the side and behind the toilet ▸Bar behind the toilet is 36 inches long ▸Height of toilet is between 17 and 19 inches ▸Flush controls are hand operated or automatic, mounted on the side of the toilet no more than 44 inches above the floor ▸If a toilet stall is less than 60 inches deep, 9 inches allowed for toe clearance ▸Doors and door hardware meet relevant standards		
	Sinks	▸Sink rim and counter surface do not exceed 34 inches in height above the floor ▸Knee clearance is at least 27 inches in height, 30 inches wide and 19 inches deep ▸Clear floor space is 30 inches by 48 inches ▸Under sinks there is insulation of pipes or configurations to protect against contact ▸No sharp or abrasive surfaces under the sink ▸Faucets are lever-operated, push-operated or electronically controlled		
	Mirrors	▸Bottom edge of a mirror is no more than 40 inches above the floor		

Restroom and Bathroom Facilities (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Shower stalls	▸ Those with seats are 36 inches by 36 inches ▸ Those without seats or with fold-up seats are 30 inches by 60 inches ▸ Have grab bars ▸ Gripping surface of grab bars is between 1¼ inches and 1½ inches ▸ The space between the bar and wall is 1½ inches ▸ In a 36-by-36 stall, bars are mounted between 33 inches and 36 inches above the floor on a side wall and under the controls ▸ Length of the side bar is 18 inches and the bar under the controls extends the whole length of the wall ▸ In 36-by-36 stalls, seats are mounted 17 inches to 19 inches above the floor and extend the full depth of the stall on the wall opposite the controls ▸ Bars in a 30-by-60 stall are between 33 and 36 inches high, and extend the full length of the side wall next to the wall on which the controls are mounted and the full length of the wall under the controls ▸ In a 30-by-60 stall, the seat either folds up or is mounted on the wall adjacent to the controls ▸ The shower spray unit has at least 60 inches of hose that can be used as a fixed shower head or a hand-held one ▸ Shower stalls that are 36-by-36 should have curbs of ½ inch or less ▸ Stalls that are 30-by-60 should not have curbs ▸ Shower enclosures should not obstruct shower controls or transfers from a wheelchair		

Restroom and Bathroom Facilities (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Bathtubs	▸Space allowance requirements are followed ▸Bathtub has grab bars and a seat either in the tub or at its head ▸Shower unit has a 60-inch hose and allows for hand-held controls ▸Faucets are lever-operated or push-operated ▸Bathtub enclosures do not obstruct access to tub controls or transfers from wheelchairs ▸Enclosures do not have tracks mounted on their rims		
	Fixed storage	▸Has clear floor space to accommodate a wheelchair (30 inches by 48 inches) ▸Meets the reach range requirements for an individual using a wheelchair ▸Hardware is accessible		
	Dispensers	▸Comply with space allowance and reach range standards		

5. Libraries

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Space allowance	▸The area for a 180-degree turn of a wheelchair is 60 inches in diameter ▸Clear floor or ground space for a stationary wheelchair is 30 inches by 48 inches		
	Accessible route	▸At least one accessible route connects accessible spaces ▸Meets the standard for space allowances ▸Provides a minimum of 80 inches of head clearance ▸If head clearance is less than 80 inches, a warning for the visually impaired is provided ▸Does not include stairs, steps or escalators ▸Doorways along the route are 32 inches wide ▸Accessible routes with running slopes greater than 1:20 comply with the ramp standard		
	Ground and floor surfaces	▸Elevations between 1/4 inch and 1/2 inch are beveled, with a slope no greater than 1:12 ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:10 and 1:12 if the maximum rise is 6 inches ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:8 and 1:10 if the maximum rise is 3 inches ▸Slopes steeper than 1:8 are prohibited		

Libraries (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Carpeting, mats	▸Firmly attached ▸Has secured or no padding or backing ▸Has maximum pile thickness of ½ inch ▸Exposed edges of carpeting are fastened to the floor ▸Trim along any exposed edge complies with the standard for ground and floor elevations		
	Protruding objects	▸Objects protruding from walls between 27 inches and 80 inches from the floor do not extend more than 4 inches from the wall along any route, pathway or aisle ▸Objects under 27 inches from the floor may extend any distance ▸Free-standing objects mounted on poles or pylons may extend out 12 inches between 27 and 80 inches from the floor ▸No object decreases a pathway to less than 36 inches		
	Reach range	▸Applies to needs of wheelchair users ▸In a frontal approach, the required reach is not less than 15 inches nor more than 48 inches above the floor ▸In a side approach, the required reach is not less than 9 inches nor more than 54 inches above the floor ▸Obstructions require an adjustment in ranges		

Libraries (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Fixed storage	▸Has clear floor space to accommodate a wheelchair (30 inches by 48 inches) ▸Meets the reach range requirements for an individual using a wheelchair ▸Hardware is accessible		
	Counters, seats, tables, desks, study carrels	▸Are 28 to 34 inches high ▸Have knee clearance 27 inches high, 30 inches wide and 19 inches deep ▸Aisles are 36 inches wide		
	Detectable warnings	▸Are at doors to hazardous areas and at stairs to warn individuals with visual impairments		
	Alarms	▸Visual alarms are installed in general use areas such as hallways and lobbies ▸Visual alarms are integrated with the auditory alarm system		
	Fixed seating, tables or study carrels	▸At least 1 or a minimum of 5 percent are accessible to individuals in wheelchairs		
	Checkout lane	▸At least one is accessible to people in wheelchairs		
	Space in front of any card catalog or magazine display	▸Is at least 36 inches wide with a preferred reach range not exceeding 48 inches from the floor		
	Stack aisles	▸Are 42 inches wide		

6. Cafeterias

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Space allowance	▸Has an area 60 inches in diameter so a wheelchair can turn 180 degrees ▸Has clear floor or ground space for a stationary wheelchair that is 30 inches by 48 inches		
	Accessible route	▸Doorways are 32 inches wide ▸Does not include stairs, steps or escalators ▸Has at least one accessible route to the food line that's 42 inches wide so someone can pass behind a wheelchair in the service line ▸Accessible route to eating area is 36 inches wide ▸Accessible route to condiments is 36 inches wide ▸Any route with a running slope greater than 1:20 complies with the ramp standard		
	Ground and floor surfaces	▸Elevations between ¼ inch and ½ inch are beveled, with a slope no greater than 1:12 ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:10 and 1:12 if the maximum rise is 6 inches ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:8 and 1:10 if the maximum rise is 3 inches ▸Slopes steeper than 1:8 are prohibited		

Cafeterias (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Carpeting	▸Firmly attached ▸Has secured or no padding or backing ▸Has maximum pile thickness of ½ inch ▸Exposed edges of carpeting are fastened to the floor ▸Trim along any exposed edge complies with the standard for ground and floor elevations		
	Protruding objects	▸Objects protruding from walls between 27 inches and 80 inches from the floor do not extend more than 4 inches from the wall along any route, pathway or aisle ▸Objects under 27 inches from the floor may extend any distance ▸Free-standing objects mounted on poles or pylons may extend out 12 inches between 27 and 80 inches from the floor ▸No object decreases a pathway to less than 36 inches		
	Reach range	▸Applies to needs of wheelchair users ▸In a frontal approach, the required reach is not less than 15 inches nor more than 48 inches above the floor ▸In a side approach, the required reach is not less than 9 inches nor more than 54 inches above the floor ▸Obstructions require an adjustment in ranges		

Cafeterias (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Fixed seating	▸At least one, but no less than 5 percent, of the fixed tables or portions of the counter are accessible		
	Eating counters and bars over 34 inches high	▸Have a 60-inch section cut out and lowered for accessibility and accessible tables in the same area		
	Eating tables, not fixed	▸Are 28 to 34 inches high ▸Have knee clearances 27 inches high, 30 inches wide, 19 inches deep		

7. Assembly Areas

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Space allowance	▸The area for a 180-degree turn of a wheelchair is 60 inches in diameter ▸Clear floor or ground space for a stationary wheelchair is 30 inches by 48 inches		
	Doors	▸Doorway is at least 32 inches wide ▸Has accessible hardware ▸Threshold does not exceed ½ inch ▸Has 18 inches of clear wall space adjacent to door handle ▸Required force to open does not exceed 5 pounds pressure		
	Accessible route	▸At least one accessible route to activity areas is 36 inches wide ▸Accessible routes with running slopes greater than 1:20 comply with the ramp standard ▸Provides a minimum of 80 inches of head clearance ▸If head clearance is less than 80 inches, a warning for the visually impaired is provided ▸Does not include stairs, steps or escalators ▸Doorways along the route are 32 inches wide		
	Stairs	▸Have uniform risers and tread ▸Have 11-inch risers ▸Have rounded step edges ▸Have handrails ▸Have no open risers		

Assembly Areas (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Ground and floor surfaces	▸Elevations between ¼ inch and ½ inch are beveled, with a slope no greater than 1:12 ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:10 and 1:12 if the maximum rise is 6 inches ▸If space limitations prohibit the use of a 1:12 slope, the slope is between 1:8 and 1:10 if the maximum rise is 3 inches ▸Slopes steeper than 1:8 are prohibited		
	Ramps	▸Are 36 inches wide ▸Have landings at appropriate intervals ▸Slope 1:12 ▸Have handrails where required ▸Handrails meet required dimensions ▸Have appropriate surface		
	Carpeting, mats	▸Firmly attached ▸Has secured or no padding or backing ▸Has maximum pile thickness of ½ inch ▸Exposed edges of carpeting are fastened to the floor ▸Trim along any exposed edge complies with the standard for ground and floor elevations		
	Signs	▸Indicate the availability of assistive listening devices ▸Indicate accessible exits		

Assembly Areas (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Protruding objects	▸Objects protruding from walls between 27 inches and 80 inches from the floor do not extend more than 4 inches from the wall along any route, pathway or aisle ▸Objects under 27 inches from the floor may extend any distance ▸Free-standing objects mounted on polls or pythons may extend out 12 inches between 27 and 80 inches from the floor ▸No object decreases a pathway to less than 36 inches		
	Number of wheelchair locations	▸1 if the seating capacity is 4 to 25 ▸2 if the seating capacity is 26 to 50 ▸4 if the seating capacity is 51 to 300 ▸6 if the seating capacity is 301 to 500 ▸6 plus 1 additional space for each 100 seats over 500		
	Placement of wheelchair locations	▸Adjoin an accessible route to an accessible exit ▸Lines of sight are comparable to those of others ▸One fixed seat for a companion is next to each wheelchair space ▸When seating capacity exceeds 300, wheelchair spaces offered in more than one location		

Assembly Areas (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Wheelchair access to viewing locations	▸If forward or rear access is required, a space 60 inches by 66 inches is provided for two wheelchairs ▸If side access is required, a space 48 inches by 66 inches is provided for two wheelchairs		
	Assistive listening devices	▸Have reserved seating (within 50 feet of the stage) for listening systems that transmit to individual fixed seats ▸Any assembly area which seats at least 50 or has an audio amplification system and has fixed seating has a permanent assistive listening system ▸Receivers are available for 4 percent of the seats, but in no case less than 2 seats ▸Other areas have such a system or can accommodate portable devices		
	Detectable warnings	▸Are at doors to hazardous areas and at stairs to warn individuals with visual impairments		
	Alarms	▸Visual signal alarms are installed ▸Visual alarms are integrated with the auditory alarm system		

8. Elevators

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Automatic operation	▸Operation is automatic ▸Elevator automatically self-corrects to stop within ½ inch or less of any floor opening		
	Hall call buttons	▸Are 42 inches from the floor ▸Have visual signals indicating when each call is registered and answered ▸Are at least ¾ inch in dimension ▸Any objects attached to the wall below call buttons do not extend out more than 4 inches		
	Visual and audible signals	▸Visual and audible signals are provided at each elevator door, indicating which elevator is answering a call ▸Audible signal sounds once for up and twice for down ▸Visual signals are mounted at least 72 inches from the floor and are at least 2½ inches in dimension ▸Visual signals are visible from the vicinity of hall call buttons		
	Raised and braille characters on elevator entrances	▸Have raised *and* braille floor designations on both jambs ▸Centerline of the characters is 60 inches above the floor, and characters are 2 inches high		

Elevators (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Door protective and reopening device	▸Doors stop and reopen automatically if a person or object blocks them ▸Reopening occurs without touching the obstruction if it is between 5 inches and 29 inches above the floor ▸Doors remain open for at least 20 seconds before closing again		
	Door and signal timing for hall calls	▸Length of time between when an elevator car door indicates it is about to open until it closes is calculated according to ADAAG formula		
	Door delay for hall call	▸Elevator doors remain fully open at least 3 seconds		
	Floor plan of elevator cars	▸Provides space for an individual using a wheelchair to enter the car, maneuver within reach of the controls and exit from the car ▸Minimum floor space of car is 48 inches by 48 inches		
	Illumination levels	▸At the car controls, platform, car threshold and landing is 5 foot candles		

Elevators (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Car controls	▸Buttons are at least ¾ inch in dimension, raised or flushed, and designated by braille *and* raised standard alphabet ▸Call button for the main floor is designated by a raised star at the left of the floor designation ▸All raised designations are to the left of any floor designation ▸Floor buttons have visual indicators to show when each call is registered ▸Visual indicator turns off when the call is answered ▸Buttons meet the reach standards: no higher than 54 inches from the floor for a side approach in a wheelchair, no higher than 48 inches for a front approach ▸In center-opening elevators, controls are located on the front wall ▸In side-opening elevators, controls are located on the front wall next to the door or on the side wall		
	Car position indicators	▸There is a visual indicator either above the control panel or over the door showing what floor has been reached ▸Letters are at least ½ inch high ▸An audible signal also indicates what floor has been reached ▸The audible signal is no less than 20 decibels and frequency is no higher than 1500 Hz		

Elevators (CONTINUED)

LOCATION	COMPONENT	ADAAG STANDARD	COMPLIES	COMMENTS AND PROPOSED ACTION
	Emergency communications	▸ Two-way communication between the elevator and another location is not required ▸ If two-way communication is provided, the device should be no higher than 48 inches above the floor, have a 29-inch cord, have accessible hardware and not require voice communication		
	Carpeting, mats	▸ Firmly attached ▸ Has secured or no padding or backing ▸ Has maximum pile thickness of ½ inch ▸ Exposed edges of carpeting are fastened to the floor ▸ Trim along any exposed edge complies with the standard for ground and floor elevations		

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